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Education Reform in Northern Ireland: a human rights review

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NORTHERN
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COMMISSION

Education Reform in Northern Ireland

A Human Rights Review



Queen's University
Belfast

Centre for Children's Rights

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by

Professor Laura Lundy

Ms Lesley Emerson

Dr Katrina Lloyd

Dr Bronagh Byrne

Mr Jamie Yohanis



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1.0 Introduction

1.1 Policy context

Recent years have seen a number of proposed educational reforms in Northern Ireland (NI) focusing on, *inter alia*, rationalisation of the schools' estate, review of the statutory curriculum, raising standards in schools and the role of schools in relation to issues associated with community relations, equality and diversity. While many of these reforms have been delayed or modified, often due to a lack of political agreement, all of them have been or are being implemented to some degree. The reforms have been prompted by a number of factors, noted briefly below:

- the establishment of the Education and Skills Authority (ESA) and planned convergence of the Education and Library Boards (ELBs), and the Council for Catholic Maintained Schools (CCMS) as a result of the Review of Public Administration (RPA);¹
- an identified need for better strategic planning in relation to the schools' estate, and the need for improved sharing and collaboration;²
- children and young people reporting that the statutory curriculum lacked relevance and enjoyment;³
- concerns that young people were leaving the education system without

having developed the necessary transferrable skills for employment;⁴

- significant variations in literacy and numeracy levels across the system;⁵
- changes in the demography of the population of NI resulting in a more diverse school population and the need to support schools in developing approaches to community relations, equality and diversity which take account of different faiths, cultures, ethnicities, disabilities, sexual orientations, etc. represented in the classroom.⁶

The resulting policies developed to respond to this context are summarised briefly below.

1.2 Policy developments

1.2.1 Schools for the Future: Policy for Sustainable Schools

The Policy for Sustainable Schools outlines educational and financial criteria for assessing the sustainability and viability of schools. These criteria do not themselves determine the automatic amalgamation or termination of schools but provide an indication of whether or not action is required.

1 Review of Public Administration – Education at: <http://www.deni.gov.uk/index/8-admin-of-education-pg/100review-of-public-administration.htm>
This is currently being implemented on a gradual basis (with CCEA outside ESA for the time being). At the time of writing it is proposed that ESA will be in operation in April 2013 with all five ELBs incorporated along with many of the functions of CCMS. CCMS will continue to have a role as a sectoral support body and there will be state support for a sectoral support body run by the Transferors.

2 DE (2006) *Schools for the future: funding, strategy, sharing: report of the Independent Strategic Review of Education*. Bangor: HMSO.

3 Harland, J., Ashworth, M., Bower, R., Hogarth, S., Montgomery, A. and Moor, H. (1999) *Real Curriculum: at the Start of Key Stage 3. Report Two from the Northern Ireland Curriculum Cohort Study*. Slough: NFER; Harland, J., Kinder, K., Ashworth, M., Montgomery, A., Moor, H. and Wilkin, A. (1999) *Real Curriculum: at the End of Key Stage 2: Report One from the Northern Ireland Curriculum Cohort Study*. Slough: NFER; Harland, J., Moor, H., Kinder, K. and Ashworth, M. (2002) *Is the Curriculum Working? The Key Stage 3 Phase of the Northern Ireland Curriculum Cohort Study*. Slough: NFER; Harland, J., Moor, H., Lord, P., Kinder, K., Kaur, S., Johnson, F. and Felgate, R. (2003). *Talking 4: the Pupil Voice on the Key Stage 4 Curriculum. Key Stage 4 Phase Short Report (Report 4 of the Northern Ireland Curriculum Cohort Study)*. Belfast: CCEA.

4 DE (2011) *Count, Read: Succeed – A Strategy to Improve Outcomes in Literacy and Numeracy*. Bangor: HMSO.

5 DE (2009) *Every School a Good School – A Policy for School Improvement*. Bangor: HMSO.

6 DE (2011) *Community Relations, Equality and Diversity in Education*. Bangor: HMSO.

There are six criteria used to assess the sustainability and viability of schools:

- **‘Quality Educational Experience’** assesses the comprehensive, inclusive and educationally enriching nature of a school.
- **‘Stable Enrolment Trends’** assesses past and projected enrolment figures and stipulates minimum class and year group sizes.
- **‘Sound Financial Position’** reviews whether a school demonstrated the ability to operate within their budgetary limitations and have, where necessary, a cogent plan to eradicate or substantially reduce deficits.
- **‘Strong Leadership and Management by Boards of Governors and Principals’** relates to the management of staff responsibilities and morale, and the regulation of pupil behaviour
- **‘Accessibility’** assesses the time it takes pupils to commute and pupil capacity in alternative and proximal schools.
- **‘Strong Links with the Community’** identifies the degree to which a school contributes to its community and the extent to which the community participates in the school.

1.2.2 Every School a Good School: Policy for School Improvement

According to Every School a Good School (ESaGS) a ‘Good School’:

- Displays **child-centred provision**, which includes promoting the general health and well being of pupils; creating opportunities for pupils to influence both the teaching-learning dynamic and wider school life and the forming of customized education paths to ensure each pupil attains their potential.
- Maintains **high quality teaching and learning**, which is evidenced by the provision of broad and relevant curriculum and which encompasses: wider literacy and numeracy goals; the positive relationship of teachers at all levels of school life; the implementation of effective differentiation strategies within the classroom and a permeating ethos of reflection and rigorous self-evaluation being advanced throughout the school.
- Exhibits **effective leadership** by articulating a clear vision for school improvement and an effective plan for its implementation; offering teachers opportunities for both professional development and leadership responsibility and fostering a relationship between the Principal and Board of Governors that is characterized by scrutiny and support.
- Embeds itself within the wider **community** by cultivating a relationship between school, parents/families and outside agencies that is characterized by respect, clear communication and commitment to the provision and support of both educational and community initiatives.

The policy states that improvement in all schools can be achieved by: supporting effective leadership and an ethos of high achievement; cultivating high quality teaching and learning; combating barriers to learning that pupils face; fostering self-evaluation and self-assessment intended to improve education; and clarifying the terms for school intervention. Furthermore, it seeks to advance improvement in schools by stimulating partnership with the wider community and capitalizing on the influence of parents/families for increased educational achievement.

1.2.3 Every School a Good School: Supporting Newcomer Pupils

The aims of ESaGS – to ensure that pupils fulfil their potential at each stage of development – form the basis of the policy for ‘Supporting Newcomer Pupils’. The policy defines a ‘newcomer pupil’ as one who has neither the language skills necessary to participate fully in the curriculum nor a language in common with the teacher.

This policy aims to build the capacity and skills of schools to support ‘newcomer pupils’ in their acquisition of the language of instruction, in an inclusive manner that grants them access to wider aspects of school life. The Department seeks to actualize these aims by implementing two key strategies. First, regional support will be offered in the areas of pastoral, curricular, linguistic and intercultural advancement. Second, funding will be made available on a per capita basis for each ‘newcomer pupil’ who has significant language acquisition needs while an ethos

of interdependence and collaboration will be cultivated between neighbouring schools to produce economies of scale.

1.2.4 The (revised) Northern Ireland Curriculum and the Curriculum Entitlement Framework

The Northern Ireland Curriculum (the revised version of which has been in operation since September 2007) requires grant aided schools to include provision for religious education and the following areas of learning:

- **At Foundation and Key Stages 1 and 2** – Language and Literacy; Mathematics and Numeracy; the Arts; the World around Us; Personal Development and Mutual Understanding (PDMU); Physical Education.⁷
- **At Key Stages 3 and 4** – Language and literacy; Mathematics and Numeracy; the Arts; Modern languages; Environment and Society; Science and Technology; Learning for Life and Work (LLW⁸); Physical Education.⁹

Content for each of the contributory subjects of these areas of learning is outlined as ‘statements of minimum entitlement’; statements in bold type are statutory but those not in bold are optional or offered as examples.¹⁰

The Northern Ireland Curriculum also requires that schools assist young people in acquiring and developing ‘cross-curricular skills’ (using mathematics, communication, and using information and communications technology) to be assessed against levels of progression.¹¹

7 At Foundation Stage Physical Education is referred to as Physical Development and Movement.

8 Learning for Life and Work comprises Personal Development, Local and Global Citizenship, Employability and, at KS3 only, Home Economics.

9 Education (Northern Ireland) Order (2006). Belfast: HMSO.

10 Education (Curriculum Minimum Content) Order (Northern Ireland) (2007). Belfast: HMSO.

11 N.9.

Provision is also made for the development of other skills within the 'Thinking Skills and Personal Capabilities' framework.

At Key Stage 4 schools must deliver the minimum content stipulated for LLW and Physical Education to all pupils.¹² In addition they must provide pupils with access to at least 24 qualifying courses¹³ (the 'Entitlement Framework'¹⁴) one-third of which are to be general and one-third of which applied courses. Also at least one course should fall within each area of learning and at least one should be a course in an official language of the European Union (other than English and, in Irish speaking schools, Irish). At post-16 schools must provide pupils with access to at least 27 qualifying courses (the 'Entitlement Framework'), one-third of which are to be general and one-third of which applied courses.¹⁵

1.2.5 Cohesion, Sharing and Integration Strategy

The aim of Cohesion, Sharing and Integration (CSI) is to create societal change by building a strong community where people live, work and socialize in a context of fairness, equality, rights, responsibilities and respect. These aims are to be fulfilled by achieving a broad range of objectives which include empowering and supporting emerging generations through long-term strategies to educate and mobilise young people in the pursuit of shared values and inter-community enterprises. Also included are strategies to develop mutual respect and the cultivation of inclusive interactions between differing cultural groups. These objectives are to take place as good

communication and cooperation at a communal, council, national and international level is engendered for the purpose of promoting cultural diversity and social networking. The Strategy was out for consultation in 2010 and is being revised in response to the criticisms which were identified during that process.

1.2.6 Community Relations, Equality and Diversity in Education Policy

The Community Relations, Equality and Diversity in Education (CRED) policy has two main aims: to increase the respect children and young people have for themselves and others; and to promote equality and eliminate discrimination. These aims are to be achieved through the provision of formal and non-formal education opportunities within which children and young people may develop relationships with those from differing backgrounds and traditions.

The CRED policy outlines three objectives designed to realize these aims. First, learners are to understand and respect the universal nature of rights, equality and diversity throughout every stage of their development. Second, children and young people are to value and respect difference, taking into account the increasing diversity of society, as they learn to participate positively within it. Third, children and young people are to be equipped with the skills and training necessary to foster the recognition of difference, to attain mutual understanding and to demonstrate respect for all. Guidance has been issued to schools to support the implementation of the policy.¹⁶

12 The statutory curriculum at KS4, therefore, comprises only RE, LLW, PE and transferable skills.

13 'Qualifying courses' are defined in the Department of Education Circular 2006/24, which also provides clarification on courses deemed to be 'general' or 'applied'.

14 The Curriculum Entitlement Framework was developed to complement the (revised) Northern Ireland Curriculum and to ensure greater choice and flexibility in terms of courses at KS4 and post-16.

15 The full requirements for the Entitlement Framework are to be phased in. From September 2013 schools will be required to provide access to at least 18 courses at Key Stage 4 increased to 21 courses by September 2014 and the full 24 by September 2015. The post-16 requirements will also be phased in, starting with 21 courses from September 2013, then 24 courses by September 2014 and the full 27 courses by September 2015.

16 DE (2012) *Community Relations, Equality and Diversity in Education Guidance Notes*. Bangor: HMSO.

2.0 Equality of access to schooling

2.1 Introduction

The general right to education, proclaimed by Article 26 of the Universal Declaration on Human Rights (UDHR), was reaffirmed and made binding by Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The latter requires States Parties to realise the right to education by ensuring that primary education is 'compulsory and available free to all' and for secondary education to be made 'generally available and accessible to all' but not compulsory.¹⁷ Similar provisions are established in Article 28 of the Convention on the Rights of the Child (CRC) and at a European level, in Article 2, Protocol 1 of the European Convention on Human Rights (ECHR).

The Committee on Economic, Social and Cultural Rights has identified 'availability' and 'accessibility' as core aspects of the right to education; specifically, that educational institutions and programmes should be available in sufficient quantity, and be accessible to everyone, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.¹⁸ To this end, States Parties are required to closely monitor education, including all relevant policies, institutions, programmes, spending patterns and other practices, so as to identify and take measures to redress any *de facto* discrimination. Further, educational

data should be disaggregated by the prohibited grounds of discrimination.¹⁹ Education also needs to be physically accessible and affordable to all.

In relation to NI, the Committee on the Rights of the Child has expressed concern at the continuing levels of educational separation and has welcomed the development of integrated schools.²⁰ As such, it recommended that the UK increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in NI to meet the demand of a significant number of parents.²¹ This concern was reiterated in 2008²² when the Committee also called upon the UK to 'put an end to the two-tier culture in NI by abolishing the 11+ transfer test and ensure that all children are included in admission arrangements in post-primary schools'.²³

The Committee has also expressed concern that several groups of children have problems being enrolled in school or in continuing or re-entering education, either in regular schools or alternative educational facilities, and as such cannot fully enjoy their right to education. These groups include, notably, children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees (for reasons due to sickness, family obligations, etc.), and teenage mothers.²⁴

17 This should be read in light of Article 2(2) which requires the Convention rights to be guaranteed to all without discrimination.

18 The grounds include: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 ICESCR). The CRC also includes disability as a ground for non-discrimination.

19 United Nations, Committee on Economic and Social Rights (1999) *General Comment No. 13: The Right to Education* (para 37). UN : Geneva E/C.12/1999/4.

20 United Nations, Committee on the Rights of the Child (2002) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*. UN: Geneva CRC/C/GBR/CO/4.

21 N.20. (para 48).

22 United Nations, Committee on the Rights of the Child (2008) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (para 67). UN: Geneva CRC/C/GBR/CO/4.

23 N.22. (para 66).

24 N.22. (para 66).

2.2 Law, policy and practice

Recently the five ELBs conducted viability audits, at the request of the Department of Education (DE), to identify schools where action needed to be taken ‘to protect the education of pupils’ and to provide a detailed area profile to assist the area-based planning process.²⁵ Every primary and post-primary school has been assessed according to three criteria, derived from the ‘Policy for Sustainable Schools’²⁶:

- quality educational experience;
- stable enrolment trends;
- sound financial position.

As noted above (section 1.2.1), the rationalisation of the schools estate is part of the broader policy objectives of ensuring that all children have access to a quality education. This will mean not only that there is no longer provision in some areas where it has existed previously but that it may be more difficult to establish new schools. This will have an impact on parental choice and may have consequences for the realisation of parents’ rights to have their child educated in accordance with their religious or philosophical convictions under the ECHR. The possible implications for particular sectors are discussed below.

2.2.1 Catholic/State school balance

According to DENI, in 2011/12 there were 524 Catholic schools and 543 Controlled schools.²⁷ The average number of pupils per class in Catholic and Controlled primary schools (Year 1 – Year 7) was 23.

This compares with an average class size of 18 in preparatory departments of grammar schools. In the primary school sector the pupil: teacher ratio is 20.4 in Controlled schools and 20.2 in Catholic schools, 14.4 in Controlled secondary schools and 14.2 in Catholic secondary schools. In Grammar schools the pupil: teacher ratio in both school management types is the same at 15.3.²⁸

The school system has developed in such a way that there is, for the most part, good access to Catholic maintained and controlled primary and secondary schools. The current issue is that the existing level of provision is considered unsustainable. The audit of schools noted above is intended to be used to decide which schools will close and this will inevitably have an impact on access in certain areas to either Catholic maintained schools or Controlled schools. This is a particular concern for parents and children living in rural areas where often primary schools in particular are operating below the required viability number of 100. There are 517 rural schools (43%) and 691 urban schools across NI (2012). 24% of all pupils attend rural schools.²⁹ Therefore, the average number of pupils in rural schools is 151 compared with 353 in urban schools.

The Catholic maintained sector has benefitted in various ways from the central management structure of CCMS. One of the consequences of this is that they have been able to initiate a review of Catholic schools and have published plans for restructuring and rationalisation.³⁰ There are, however, concerns by parents about the closure of Catholic schools in rural areas as well as some opposition from

25 A key driver underpinning an area-based planning approach is the objective to provide a system of strong sustainable educational facilities. Area-based planning is about anticipating the future education needs of an area and planning to meet those needs. Its central objective is to provide a sufficiency of education places through the appropriate mix of facilities, of the right size, in the right locations.

26 Audits are publically available on ELB websites.

27 DE(2012) *Enrolments at Schools and in Funded Pre-School Education in Northern Ireland 2011/12*. Bangor: HMSO. Available at: www.deni.gov.uk/enrolments_in_schools_1112_-_february_release.pdf

28 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32-statistics_and_research_statistics_on_education_pg/32_statistics_on_education-pupil_teacher_ratios_pg.htm

29 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32-statistics_and_research_statistics_on_education_pg/32_statistics_and_research-numbersofschoolsandpupils_pg/32_statistics_and_research-northernirelandsummarydata_pg.htm

30 Northern Ireland Commission for Catholic Education (2012) *Post Primary Review Strategic Regional Report*, NICCE: Dungannon.

parents of children attending grammar schools about the Commission's recommendations that Catholic secondary schools should operate on a non-selective basis. It is proposed that many of the existing functions of CCMS will be transferred to ESA but CCMS will continue to be supported to provide sectoral support to Catholic maintained schools.

Controlled schools are run on a non-denominational basis. Representatives of the four main Protestant churches have representation on the Boards of Governors. However, the umbrella organisation, the Transferor Representatives' Council, has not had a statutory basis or management powers such as those given to CCMS. Concern has been expressed for many years by the Transferors about the lesser protection and state support for the protection of the Christian ethos in controlled (de facto Protestant) schools which they have argued is an equality issue.³¹ As part of the introduction of ESA, it has been agreed that there will be a new sectoral support body for controlled schools.

2.2.2 Integrated Education

There are 38 grant-maintained integrated schools and 23 controlled integrated schools. Within the primary school sector, the largest average class sizes were in Grant Maintained Integrated schools, where there was an average class size of 27 pupils. The pupil: teacher ratio in Grant Maintained Integrated schools is 21:4.³²

DE has a duty to encourage and facilitate the development of integrated education and legislation details the procedures for

the establishment of new integrated schools and the transformation of existing schools.³³ In spite of support for integrated schools being expressed in many policy documents, there are concerns about a lack of support for further expansion in the integrated sector. The DE bases its decisions on pre-established policies about the viability of the proposal. Since 1996 the approach in these policies encouraged the transformation of existing schools rather than the establishment of new integrated schools on the basis that this is consistent with 'increased responsiveness, the utilization of existing facilities and increased cost-effectiveness'.³⁴ The rate of growth in the sector appears to have levelled off at just less than 7% of the school population in spite of the fact that public surveys continue to show a very high level of support for integrated education³⁵ and that many integrated schools continue to be oversubscribed in their admissions applications. Applications can be refused approval (even where a reasonable case for future viability might be demonstrated and there is a high level of parental support for the transformation) on the basis of the impact on other non-integrated schools, i.e. disturbance to the status quo. The problem is exacerbated by the fact that applications to transform are being made at a time when there is a clear policy imperative to rationalise and reduce the schools estate generally. The net consequence of this is that the likely impact on other schools is always potentially high, as most existing schools are not exceeding their admissions and enrolment numbers.

31 Transferor Representatives' Council (2007) Briefing Document for Assembly Education Committee: Review of public administration in Education Proposals in respect of school governance and accountability, NI: TRC.

32 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32-statistics_and_research_statistics_on_education_pg/32_statistics_on_education-pupil_teacher_ratios_pg.htm

33 Education (Northern Ireland) Order (1989) (Arts. 64- 93). Belfast: HMSO.

34 DE (1996) *Integrated Education: A Framework for Transformation*. Bangor: HMSO.

35 In 2010, 70% of Northern Ireland Life and Time survey respondents said they would prefer to send their children to a mixed-religion school. A survey carried out in 2008 on behalf of NICIE found that 84% of respondents who had children or grandchildren of school age or younger thought that integrated education was 'very important' or 'fairly important' to peace and reconciliation in Northern Ireland.

2.2.3 Irish Medium Education

Article 8 (1) of the European Charter for Regional and Minority Languages requires Parties to undertake, within the territory in which such languages are used, to either: (i) make education available in the relevant regional or minority language; (ii) make a substantial part of primary education available in the relevant regional or minority languages; (iii) provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or (iv) make one of these options available at least to those pupils whose families so request and whose number is considered sufficient. In instances of territories other than those in which the regional or minority languages are traditionally used, Article 8(2) requires Parties to 'allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education' if the number of users of a regional or minority language justifies it.

There are 23 Irish Medium schools and 12 schools with Irish Medium units.³⁶ A total of 2,999 pupils (1.0% of pupils in grant-aided schools) attend Irish Medium schools, with a further 920 pupils attending Irish Medium units attached to English-medium schools.³⁶ The pupil: teacher ratio is lower in Irish Medium schools than in other schools.

DE is under an obligation to promote and facilitate Irish Medium education which it does in part through the funding of Comhairle na Gaelscolaíochta. Concerns have been raised about a number of issues impacting on equality of access

to education, including the availability of places in Irish Medium units across NI, support for curricular material and the need for specialised special educational needs (SEN) provision.³⁸ In 2008/09 the DE undertook a review of Irish Medium education which examined ways of ensuring accessible and sustainable provision. This proposed that a federated structure with a range of options, including units attached to mainstream schools and options of full- and part-time immersion would work best, particularly in the secondary sector where there is a geographical challenge in providing access to schools and in delivering the range of subjects required as part of the Entitlement Framework.

2.2.4 School Collaboration

Schools have an incentive to collaborate in order to meet the requirements of the Entitlement Framework, although there is no central data on the extent to which this is happening in practice. In order to facilitate this, legislation has defined the responsibility for pupils who travel to other schools to attend courses not offered in their own school.³⁹ However, this legislation does not take into account issues pertaining to cross-community collaboration and the rights of children and young people in relation to their religious and cultural identities other than to say that schools which pupils attend (but are not registered) do not have to provide the pupil with religious education or collective worship (see section 6.2.2). One of the consequences of the review of the school estate is that some schools that might otherwise be facing closure have begun to consider whether they can operate with a

³⁶ Available at: www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/schools_-_types_of_school-_irish-medium_schools_pg.htm

³⁷ N.28.

³⁸ DE (2009) *Review of Irish-Medium Education Report*. Bangor: DE.

³⁹ Education (2006 Order) (Commencement No2) Order (NI) 2007. Circular 2007/20 gives guidance on the responsibilities in relation to attendance, discipline, charging and SEN for pupils who are attending a school but are not registered pupils.

shared management structure (such as one principal and a joint board of governors) as a means of saving resources. The current legislation on school governance would make this difficult if the collaboration was to be implemented on a cross-sectoral basis (e.g. between a controlled and maintained school) as principals in these sectors have different employers and the Boards of Governors are constituted differently.⁴⁰ The current proposal to merge ELBs and CCMS within ESA and to have a single employment authority would address the first issue, if it is implemented. However, for cross-sectoral school management and governance to be viable, there would need to be an appropriate statutory governance framework. As it stands, these schools would currently have to operate either as voluntary maintained or as controlled integrated schools (each of which is problematic and might not be acceptable to some) or new legislation would have to be introduced enabling them to retain their separate identities under a shared and legally revised management structure.

2.2.5 Use of academic selection at secondary school

Most grammar schools use academic tests as the primary determinant for admission to school. Legislation prohibiting grammar schools from using ability testing to determine admission was put on hold as a result of the St Andrew's Agreement. Since that time, the Minister for Education has been from Sinn Féin which is opposed to a selective system. The Minister has declined to issue regulations allowing selection on ability or to authorise a central transfer procedure

test. However, the DE has issued guidance for schools on its admissions criteria and schools are required by law to have regard to this.⁴¹ At the time of writing the guidance recommends that schools should: give priority to children with free school meals (FSM) entitlement; who have a sibling currently attending the school; are the eldest child; are from a named feeder school, parish or catchment area; or are the nearest suitable school; and tie breakers. They should not use criteria that prioritise applicants according to the level of preference of an application; familial criteria beyond sibling currently attending; prioritising children of employees; and distance tie-breakers.

The guidance also recommends that schools do not use academic criteria. However, the Minister cannot prohibit secondary schools from using criteria which select on ability and most grammar schools continue to select on ability using privately organised academic tests: one run by a local company, the Association for Quality Education (AQE) (used mainly by grammar schools who admit mainly Protestant children) and one set by Granada Learning (GL) Assessment (used mainly by Catholic grammar schools). A small number of schools allow children to apply with the results of either test. According to figures obtained by the Belfast Telegraph⁴², in 2011 all grammar and integrated schools in NI used the results of the two unregulated transfer tests taken by P7 pupils for Year 8 intake. Full details of each grammar school's intake have been published by the Belfast Telegraph.⁴³ Pupils with special educational needs who are not 'statemented' must take the tests if their parents want them

40 See Lundy, L. (2000) *Education Law, Policy and Practice in NI* (SLS: Belfast).

41 Education (Northern Ireland) Order (1997) (Art. 16A). Belfast: HMSO.

42 Unnamed, 2011. 'Even The Lowest Grade Can Get You Into A Grammar School' Belfast Telegraph [Online] 23 November. Available at: www.belfasttelegraph.co.uk/news/education/even-the-lowest-grade-can-get-you-into-grammar-school-16081342.html

43 Torney, K., 2010. 'Revealed: Northern Ireland's Grammar School Entry Test Lottery' Belfast Telegraph [Online] 9 October. Available at: www.belfasttelegraph.co.uk/news/education/post-primary-selection/revealed-northern-irelands-grammar-school-entrance-test-lottery-14971040.html

to be considered for a grammar school place and schools have put in place systems for considering whether applicants' grade can be upgraded on the basis of special circumstances.

A number of concerns have been raised about the use of selection tests at 11, in particular the fact that children from poor socio-economic backgrounds do not perform as well. Research has consistently shown a link between FSM entitlement and Transfer Test grade. The proportion of pupils who achieved a grade A varies by, and is correlated with, FSM band, with schools that had fewer pupils entitled to FSM having higher proportions of pupils who achieved a grade A in the Transfer Test.⁴⁴ Schools with more than 30% of pupils entitled to FSM were considerably less likely to have pupils receiving an A in the Test. Moreover, there is significant concern that the current practice of two sets of private tests puts undue stress on children and is not always a good determinant of ability. In research conducted by NICCY, children raised a variety of concerns in relation to the uncertainty and nerve-wrecking nature of the unregulated tests and taking tests on Saturday mornings in unfamiliar school settings was unsettling.⁴⁵ Beyond the tests themselves, there appears to be long-term advantage for children who attend grammar schools over those who attend non grammar schools, everything else being equal.

2.3 Key concerns

- To ensure that equality of opportunity and access to school places in accordance with parental choice is not impacted adversely by the rationalisation of schools.
- To keep under review whether the deployment of objective viability criteria might have an impact on access to education for those in the Catholic and controlled sectors and those wishing for Irish medium or integrated education.
- To ensure a resolution of the current use of unregulated transfer procedure tests and to move to a fair system for transfer to secondary school.
- To encourage a review of current legislation in relation to school collaboration and shared management.

44 'What do we know? Educational Opportunities and Outcomes'. Available at: www.ark.ac.uk/publications/books/fio/10_fio-education.pdf

45 NICCY (2010) *Talking Transfer*, Belfast: NICCY; see also Ark update available at: <http://www.ark.ac.uk/publications/updates/update73.pdf>

3.0 Access to an effective education

3.1 Introduction

Both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have made it clear that education must be of good quality and effective. For example, the Committee on Economic, Social and Cultural Rights has made it clear that: the form and substance of education, including curricula and teaching methods, have to be ‘acceptable’; and that education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings, that is; ‘adaptable’.⁴⁶

The right to an ‘effective education’ is guaranteed by Article 2, Protocol 1 ECHR.⁴⁷ Thus, access is only one part of the right to education; rather, for education to be effective, ‘the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State...official recognition of the studies which he has completed’.⁴⁸ This

must also be read in light of Article 14 ECHR, the right to non-discrimination.

In its 2008 Concluding Observations to the UK, the Committee on the Rights of the Child expressed concern that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship and called upon the UK to take action.⁴⁹ It built upon its 2002 recommendation to take measures to eliminate the inequalities in educational achievement between children from different groups by calling upon the UK to invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures full enjoyment to children from all disadvantaged, marginalized and school-distant groups (including children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees for different reasons such as sickness, family obligations, etc., and teenage mothers).⁵⁰

46 N.19.

47 Belgian Linguistics Case (No.2) (1968) 1 EHRR 252.

48 N.47. (para 4).

49 N.22. (para 66-67).

50 N.22. (para 67).

3.2 Law, policy and practice

3.2.1 Socio-economic disadvantage

Schools receive additional premium for children in receipt of FSM. While 23% of all children in NI are entitled to FSM, more children from within Catholic Maintained and Irish Medium schools are entitled to FSM.⁵¹ Data from 2 waves of the Millennium Cohort study (when the children were aged five years and seven years) showed that teacher ratings of children's abilities in school (including reading, writing, science, mathematics, etc.) were related to socio-economic disadvantage. Children who had not experienced poverty in either wave received the highest ratings from their teachers, followed by those who had experienced poverty in only one wave. Those who had experienced poverty in both waves received the poorest evaluations from their teachers.⁵²

Disadvantage is evident at all educational stages. The qualifications of school leavers data indicates the continuing educational disadvantage for pupils entitled to FSM. Such pupils are only half as likely to have at least 5+ GCSEs (A*-C) or with two or more A levels⁵³ and they are four times more likely to have no educational qualifications⁵⁴. 60% of Year 12 pupils achieved five or more GCSEs (including

equivalents) at grades A*-C including English and mathematics. When this figure is analyzed by school type, 36% of non-grammar schools and 93% of grammar schools are achieving this standard.⁵⁵ School leavers not entitled to FSM are more likely to continue their education with 78% entering institutions of Higher or Further Education compared to 60% of leavers who were entitled to FSM.⁵⁶

Research has highlighted a number of barriers to education experienced by children from low socio-economic backgrounds. Young people from less well-off families report significantly worse school experiences than those from well-off families⁵⁷, due in part to poor relationships with teachers and a perceived lack of respect from them.⁵⁸ Further, children and young people from poorer backgrounds in the past have been critical of the curriculum and its relevance to their lives, reporting that teaching methods are not sufficiently engaging.⁵⁹ Also children in disadvantaged schools are aware of, and worried about, the difficulties faced by parents in meeting all the costs associated with schooling, particularly in relation to school uniforms, trips and no-uniform days.⁶⁰

51 N.29.

52 OFMDFM (2010) *The consequences at age 7 of early childhood disadvantage in Northern Ireland and Great Britain*. London: HMSO. Available at: www.ofmdfmni.gov.uk/the_consequences_at_age_7_of_early_childhood_disadvantage.pdf

53 Torney, K., 'Exam Results Show a Third of our Schools are Failing' The Detail [Online]. Available at: www.thedetail.tv/issues/62/educational-achievement/exam-results-show-a-third-of-our-schools-are-failing

54 N.44.

55 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32_statistical_publications-indexofstatisticalpublications_pg/32_statistical_publications_pressreleases_pg/statistics_and_research_-_national_statistics_school_performance.htm

56 Available at: www.deni.gov.uk/qualifications_and_destinations_2009_10.pdf

57 ARK. Young Life and Times Survey, 2008 [computer file]. ARK www.ark.ac.uk/ylt [distributor], May 2009.

58 Horgan, G. (2007) *The Impact of Poverty on Young People's Experience of School*. York: Joseph Rowntree Trust.

59 N.3; Horgan, G. and Monteith, M. (2009) *What can we do to tackle child poverty in Northern Ireland?* York: Joseph Rowntree Trust.

60 N.58; N.59b.

3.2.2 Religion

While historically there were concerns regarding the underachievement of Catholic children and young people in schools, recent statistics suggest that this concern has been addressed. For 2009/10, DE reported that 56% of leavers from Catholic schools achieved two or more A levels compared to 49% of leavers from schools attended by mainly Protestant children. 39% of Protestant school leavers enter Institutions of Higher Education compared with 45% of Catholic school leavers.⁶¹ More recently however, the underachievement of working class Protestant boys in particular has been raised as a concern.⁶² 20% of Protestant boys entitled to FSM achieve at least five GCSEs at grades A*-C or equivalent including English and Math compared with 28% of Catholic boys entitled to FSM.⁶³

3.2.3 Gender

Article 10 of the Convention on the Elimination of Discrimination Against Women (CEDAW) requires States Parties to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education. This includes measures to ensure equality of access to studies and for the achievement of qualifications in all educational establishments. The Sex Discrimination (NI) Order 1975 prohibits discrimination in access to education and in educational opportunities. A particular concern for girls relates to the educational opportunities for pupils who are pregnant. While schools are aware that pupils can no longer be excluded on the basis of pregnancy, concern has been raised about

the adequacy of educational provision for young mothers.⁶⁴

From an attainment perspective, boys are faring less well than girls. According to DENI figures for 2010/11, females generally perform better than their male counterparts. 80% of female pupils in Year 12 achieved five or more GCSEs (including equivalents) at grades A*-C compared to 71% of males. The reported gender of pupils entered for A levels (or equivalent) in Year 14 was: 44% male, 56% female. This compares to 50% male, 50% female in Year 12. As with GCSE level, females outperform males – 66% of females in Year 14 achieved three or more A levels (including equivalents) at grades A*-C compared to 62% of males.⁶⁵ More females (48%) than males (36%) continued on to Higher Education Institutions while more of the latter entered Training than the former (17% and 7% respectively).

3.2.4 Children for whom English is not the first language⁶⁶

Article 5 of the Convention on the Elimination of Racial Discrimination (CERD) obliges States Parties to prohibit and eliminate all forms of racial discrimination. DENI figures⁶⁷ show that the number of newcomer children overall has risen from 1,366 in 2001/12 to 8,418 in 2011/12. In 2010/11, 73% of children from Minority Ethnic Groups (including Irish Travellers) achieved at least five GCSEs A*-C compared with 72% for White children. However, more of the former than the latter left school with no GCSEs or other formal qualifications (5% and 2% respectively). Pupils for whom English is not the first language attract an additional

61 Available at: www.deni.gov.uk/qualifications_and_destinations_2009_10.pdf

62 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32_statistical_publications-indexofstatisticalpublications_pg/32_statistical_publications_pressreleases_pg/statistics_and_research_-_national_statistics_school_performance.htm

63 Available at: www.deni.gov.uk/qualifications_and_destinations_2009_10.pdf

64 N.22. para 66-67.

65 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32_statistical_publications-indexofstatisticalpublications_pg/32_statistical_publications_pressreleases_pg/statistics_and_research_-_national_statistics_school_performance.htm

66 A newcomer pupil is one who has enrolled in a school but who does not have the satisfactory language skills to participate fully in the school curriculum, and the wider environment, and does not have a language in common with the teacher, whether that is English or Irish. This has previously been referred to as English an Additional Language. It does not refer to indigenous pupils who choose to attend an Irish medium school.

67 Available at: www.deni.gov.uk/index/32-statisticsandresearch_pg/32-statistics_and_research_statistics_on_education_pg/32_statistics_and_research-numbersofschoolsandpupils_pg/32_statistics_and_research-northernirelandsummarydata_pg.htm

pupil premium which is to be used by schools to meet their needs. Support and training for teachers is co-ordinated by the Inclusion and Diversity Service (IDS) – a regional service created by an amalgamation of the previous EAL/Ethnic Minority Teams from the ELBs. The DE policy document *Every School a Good School: Supporting Newcomer Pupils* addressed the issue specifically, acknowledging gaps in the available data and a need for further training and support for teachers. DE has also issued guidance to schools.⁶⁸

3.2.5 Irish Travellers

The 2010 school census shows that 77.3% of Irish Traveller pupils are entitled to FSM compared with 20.4% of the general school population. Data collected as part of the School Leavers Survey combined years of attainment data for Irish Traveller children (2003/04 to 2008/09) and reported that 62% left school with no GCSEs compared with 3% of all school leavers. 54% of Traveller pupils of statutory school age have been identified as having Special Educational Needs (SEN) in comparison with 20% of all pupils.⁶⁹

It is unlawful for schools and other public bodies to discriminate against children from the Irish Traveller community.⁷⁰ While there is an ongoing issue about the use of admissions criteria which favour settled children in oversubscribed schools, most of the concerns about equality of access to education relate to the levels of attendance and attainment of Traveller children. In 2010 DE issued revised guidance on the education of children and young people from the Traveller community which provides schools with information on their legal and human rights obligations

and guidance on addressing some of the issues impacting on equality of access to education.⁷¹ In 2011 a DE taskforce on Traveller Education provided a comprehensive review of the key human rights and equality issues affecting Traveller children in the school system.⁷² It acknowledged considerable progress in recent years but identified a series of recommendations to improve access, attendance and attainment among Traveller children. These included: additional advice and information for parents; support with transition; flexibility in the curriculum; monitoring of the reasons for non-attendance and a review of a statutory defence to non-attendance. DE is to prepare an action plan arising from the report.

3.2.6 Children with disabilities

Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) establishes the right to education for children with disabilities, setting out in some detail the actions States Parties need to take in order to ensure this right for children (and adults) with disabilities. Significantly it requires States Parties to ensure an 'inclusive education system at all levels.' States Parties are also required to ensure that 'effective individualised support measures' are provided in environments that 'maximise academic and social development, consistent with the goal of full inclusion' and for 'reasonable accommodation of the individual's requirements'. The remainder of Article 24 sets out further measures required including facilitating the learning of Braille and alternative means of communication; the learning of sign language; and ensuring that staff in

68 DE (2009) *Every School A Good School: Supporting Newcomer Pupils*. Bangor: HMSO.

69 Taskforce on Traveller Education (2010) *Report of the Taskforce to the Department of Education*. Available at: <www.deni.gov.uk/taskforce_on_traveller_education_-_report_of_the_taskforce_to_the_department_of_education.pdf>

70 Race Relations (NI) Order was amended to include the Irish Travelling community within the definition of racial and ethnic minorities. Art. 5 as amended by Reg. 6 of the Race Relations Order (Amendment) Regulations (NI) 2003.

71 DE (2010) *The Education of Children And Young People From The Traveller Community Circular* 2010/15. Bangor: HMSO.

72 N.69.

education settings receive a range of training in, for example, disability awareness and communication approaches.

Educational provision for pupils with SEN is currently determined by the Special Educational Needs and Disability Order (SENDO) (NI) (2005), supplemented by a set of Codes of Practice.⁷³ The legislation groups children into two categories: those with more severe or complex needs who receive a statement of SEN from the ELB and others whose needs are met from resources available to mainstream schools. In 2011/12, 4,549 children attended special schools – this represents 1.4% of all school pupils in NI. Overall absence rates were higher for children in special schools (10%) than for children in primary (5%) and secondary (7%) mainstream schools.⁷⁴ 21% of pupils in schools were recorded as having SEN: 4% of pupils had a statement of SEN.⁷⁵ 38% of children with SEN Stage 1-4 and 21% of those with SEN Stage 5 achieved 5 GCSEs (A*-C) or equivalent. 6% of the former and 13% of the latter achieved no GCSEs at all compared with 1% of children with no SEN.

Children with statements are entitled to receive the additional provision detailed in the statement and their parents are able to make appeals to the Special Educational Needs and Disability Tribunal (SENDIST) on a range of issues. Concerns about the existing system include: delays in assessment and statementing processes; insufficiently specific provision in the statements; and the lack of a statutory requirement to give children's views due weight (although this is included in the Code of Practice).

A recent review of SEN provision has resulted in a series of proposals for change.⁷⁶ Key amongst these is that the number of stages to receive additional statutory assistance will be reduced from five to two, a change which is said to be intended to ensure that assessments are processed quickly. Most controversial is the proposal that statements will be replaced by Coordinated Support Plans (CSPs) and that there will be many fewer (possibly 50%) of these.

Young people with learning disabilities who not have CSPs will have Personal Learning Plans (PLPs). However, there is little detail on these at present and a concern, particularly among the many parents who responded to the consultation, that there will be a significant loss of entitlement and protection in a move from a CSP to a PLP.⁷⁷ In particular, the current statement of SEN provides a passport to a number of rights, including: ring-fenced support from ELBs and specific rights of challenge to the SENDIST. Children who do not have a statement have many fewer legal protections and provision, including the allocation of resources, is largely at the discretion of the school. There is a strong argument for further legal protection in relation to provision for these children, including a robust duty on boards of governors to meet their needs, greater accountability in relation to the use of school resources and new rights of appeal to challenge decisions to the SENDIST. A core issue which remains outstanding will be the revised definition of who is entitled to a CSP and who is entitled to a PLP. This is of great significance given the additional protections, support and resourcing which the former may enjoy.

73 Special Educational Needs and Disability (Northern Ireland) Order (2005). Belfast HMSO. Codes of Practice are available at: <http://www.deni.gov.uk/index/7-special_educational_needs_pg/special_needs-codes_of_practice_pg.htm>

74 Available at: <www.deni.gov.uk/index/32-statisticsandresearch_pg/32-statistics_and_research_statistics_on_education_pg/32_statistics_and_research_-_statistics_on_education-pupil_attendance/statistics_and_research_-_statistics_on_education-attendance_201011.htm>

75 N.27.

76 DE (2009) *Every School A Good School: The Way Forward For Education Special Needs and Inclusion*. Bangor: DE.

77 DE (2012) Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment Bangor: DE. Available at: http://www.deni.gov.uk/index/7-special_educational_needs_pg/review_of_special_educational_needs_and_inclusion.htm

3.2.7 Young people in detention

In its General Comment on Children's Rights in Juvenile Justice, the Committee on the Rights of the Child has made it clear that children in detention have the right to an education suited to his/her needs and abilities, and designed to prepare him/her for return to society.⁷⁸ The profile of many of the young people who enter the Juvenile Justice System indicate the high levels of special needs and below average literacy level amongst those held in custody. For example, of the 30 children in the Juvenile Justice Centre on 30 November 2007, 20 had a diagnosed mental health disorder, 17 had a history of self-harm, eight had at least one suicide attempt on record, eight were on the child protection register, and 14 had a statement of SEN.⁷⁹ The education of young people in the system falls within the remit of the Northern Ireland Office rather than DE; one consequence of which is that young people in detention do not have a right of access to the statutory NI Curriculum. The Committee on the Rights of the Child has expressed repeated concern about this.⁸⁰ While Criminal Justice Inspectorate inspections have noted some improvement in the quality of education provided in juvenile justice centres, ongoing concerns include: the lack of a specific learning and training strategy; and outdated curricula not matched to the needs of prisoners, employers or the local labour market.⁸¹ A particular concern from a human rights

perspective is that young people do not receive education in a school setting, even towards the end of their sentence.⁸²

3.2.8 Young people in care

In 2010, 1,675 children and young people had been looked after continuously for 12 months or longer; of these, 54% were boys and 46% were girls; 96% were White, and 14% were disabled. Over three-quarters (77%) of children were of school age, 24% of whom had a statement of SEN (4% for the general school population), 1% had a permanent exclusion from school, 10% had been suspended from school, and 12% had missed at least 25 school days within the relevant school year. In 2009/10, 60% of eligible looked after children attained Key Stage 1 Level 2 in English and 63% in Maths – this compares with 95% for the general school population. 64% of looked after children attained at least one GCSE/ GNVQ at grades A* to G, this compared with 99% of the general school population.⁸³ *Care Matters*, a 2007 review of state provision for looked after children, identified concerns about the tracking of data, issues of confidentiality and the need for training for teachers and carers.⁸⁴ As part of ESaGS, DE has issued new guidance for schools which requires them to ensure that every child has a Personal Education Plan and that there is increased communication and co-operation between education and health and social services.⁸⁵

78 United Nations, Committee On The Rights Of The Child (2007) *General Comment No. 10: Children's Rights In Juvenile Justice* (para 89). UN: Geneva CRC/C/GC/10.

79 Include Youth (2011) *Response to Northern Ireland Law Commission Consultation on Bail in Criminal Proceedings*. Available at: <http://includeyouth.org/Include_Youth_Response_to_NI_Law_Commission_Consultation_on_Bail_in_Criminal_Proceedings_FINAL.pdf>

80 N.22. (para 78).

81 See for example, the latest inspection on Hydebank Wood YOC, Criminal Justice Inspectorate (2011)

82 Convery, U. and Moore, L. (2006) *Still In Our Care. Protecting children's rights in custody in Northern Ireland*. Belfast: Northern Ireland Human Rights Commission.

83 Available at: http://www.dhsspsni.gov.uk/index/stats_research/stats-cib/statistics_and_research-cib-pub/children_statistics/stats_and_research_cib_children_in_care.htm

84 Department for Education and Skills (2007) *Care Matters : Time for Change White Paper*. London: HMSO.

85 N.5.

3.2.9 Young people out of school

The term 'EOTAS' refers to all forms of 'education otherwise than at school', including Alternative Education Provision (AEP) for young people who cannot cope with or adjust to mainstream schooling, often because they have challenging behaviour in a mainstream environment.

Information on pupil suspensions and expulsions is collected annually from the ELBs. In the 2010/11 school year, there were a total of 38 expulsions. The majority of the pupils who were expelled were male and of post-primary age, with 50% of pupils expelled from Key Stage 4. The three most common reasons for expulsion were persistent infringement of school rules accounting for 24% of expulsions, disruptive behaviour in class (21% of expulsions) and substance abuse (18%).⁸⁶

AEP is currently provided with a mix of statutory and voluntary provision and concern has been expressed about the availability of resources for this with consequent effects on the quality of some of the provision. DE's *Promoting and Sustaining Good Behaviour: Discipline Strategy for Schools* set out the provision/ expansion of alternatives to mainstream schooling for disaffected pupils, many of them in their final one or two years of compulsory education. In the SEN review, DE reported that over the course of a school year up to 1,000 young people of post primary age may be permanently out of mainstream schools and that 'more worryingly, pupils below the age of 14 and those with statements of SEN are now found in AEP'.⁸⁷ DE said it was conducting

a review of AEP in 2009 as part of ESaGS but there is no further developments reported on its website.

It is estimated that, in 2010, 13,000 young people between 16 and 19 were in the NEET (not in education, employment or training) category in NI.⁸⁸ DEL is currently developing a cross Departmental strategy, 'Pathways to Success', for reducing the numbers of young people most at risk of entering or remaining in the NEET category.⁸⁹ The overall aims of the strategy are to prevent young people from becoming NEET, and to re-engage those young people aged 16-19 who are already in the NEET category.

3.2.10 Reform of the public examinations system

Students have a right to recognition of their studies. For many students, this is achieved through participation in public examinations at GCSE and GCE level set by CCEA and other awarding bodies such as AQA and Ed-Excel. The examination system has generated a lot of public debate in recent years, with widespread criticism about grade inflation. A crisis in the 2011/12 examinations (relating to the raising of grade boundaries) has generated a series of reviews across the United Kingdom, including a 'root and branch' review in NI.⁹⁰ From a rights perspective, it is important that any changes to the system: allow young people to have fair credit for their achievements; are in young people's best interests; do not have discriminatory effects; and include young people's perspectives in the reform process.⁹¹

86 Available at: <http://www.deni.gov.uk/expulsion_statistics_2010-11_9.83kb.pdf>

87 DE (2009) *Every School a Good School: the Way Forward for Education Special Needs and Inclusion*, p.20. Bangor: DE.

88 DEL (2010) *A Scoping Study of those Young People Not in Education, Employment or Training (NEET) in Northern Ireland*, Belfast: DEL.

89 DEL, *Pathways to Success: Establishing an initial broad strategic direction and supporting cross-Departmental actions to reduce the number of young people most at risk of remaining outside education, employment or training (NEET)*. The consultation period ran from 24 March 2011 to 30 June 2011.

90 <http://www.deni.gov.uk/qualifications.htm>

91 Elwood, J. and Lundy, L. (2010) *Revisioning assessment through a children's rights approach: implications for policy, process and practice*, *Research Papers in Education*, Volume 25, Number 3, 1 September 2010, pp. 335-353.

3.3 Key Concerns

- To ensure the SEN review does not result in a retrogression of provision.
- To encourage implementation and keep under review the existing action plans and strategies in relation to the education of disadvantage and vulnerable young people, in particular young people in care, young people not in school and Travellers.
- To take forward the recommendations of the DE Taskforce on Traveller Education.
- Educational provision for young people in detention should fall under the remit of DE.
- The examinations system should: ensure that young people get credit for their study; be fair and non-discriminatory; and any reforms should take account of young people's views.

4.0 Aims of Education

4.1 Introduction

Article 29 CRC states that the education of the child should be directed at: the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and freedoms; tolerance and respect for diversity; the preparation of the child for responsible life in a free society; and the development of respect for the natural environment.⁹² In interpreting this article, the Committee on the Rights of the Child has emphasized that education should be child-centred, child-friendly and empowering. Further, they state that 'education' goes beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society. As such, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs. Moreover, it should take full account of the child's evolving capacities and teaching methods should be tailored to the different needs of different children.⁹³ The Committee also states that

children must have access to educational experiences which reflect 'an appropriate balance between the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions'.⁹⁴ To this end the Committee has stated that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the development of the child to the fullest potential of his or her abilities and talents.⁹⁵

According to the Committee on the Rights of the Child, education must be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. The Committee has stipulated that basic skills include 'not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life'.⁹⁶

92 UN (1989) United Nations Convention on the Rights of the Child UN: Geneva.

93 United Nations, Committee on the Rights of the Child (2001) General Comment No.1: Aims of Education(para 9). UN: Geneva CRC/GC/2001/1.

94 N.91. (para 12).

95 N.91. (para 12).

96 N.91.

4.2 Law, policy and practice

4.2.1 The Northern Ireland Curriculum

The aim of the (revised) NI Curriculum aligns closely with the general aims of education as set out in Article 29 (CRC): ‘to empower young people to achieve their potential and to make informed and responsible decisions throughout their lives and to develop them as individuals, contributors to society, contributors to the economy and the environment’.⁹⁷ Each area of learning/subject strand is required to orientate its content around these broad objectives and in particular to demonstrate its contribution to these objectives through reference to the associated ‘key elements’ of the curriculum.⁹⁸ In addition in placing an emphasis on the development of transferable skills⁹⁹ and on assessment for learning,¹⁰⁰ the NI Curriculum promotes the type of active and participatory pedagogical approaches suggested by the Committee above.¹⁰¹ Further to the statutory curriculum requirements, child-centred provision and high quality teaching and learning are key characteristics of an effective school.¹⁰² Though there is little

research evidence in relation to classroom practice, indications are that, by and large, the NI curriculum is providing a policy context in which the aims of education may be suitably met. However, since only the minimum content of the curriculum is statutory (that is, the content in ‘bold’), schools have a great deal of discretion as to how they interpret these ‘statements of minimum entitlement’ which may result in variability in relation to how these issues are addressed.

4.2.2 Preparation for adult life

Statistics suggest that young people are affected more acutely by unemployment than the general public. For example, in November 2012 the percentage of the NI workforce that was unemployed was 6.9% but for those aged 18-25 the figure was 28.2%.¹⁰³ School leavers (leaving after Year 12) seeking employment are more likely to come from the non-grammar sector than the grammar sector. For example, in 2009/10, 34% of the Year 12 cohort left school. 50% of Year 12 non-grammar pupils left school compared with 9% of

⁹⁷ N.91.

⁹⁸ The key elements associated with developing the child as an individual include personal understanding, mutual understanding, personal health, moral character and spiritual awareness; the key elements associated with developing the child as a contributor to society include citizenship, cultural understanding, media awareness and ethical awareness; the key elements associated with developing the child as a contributor to the economy and the environment include employability, economic awareness and education for sustainable development.

⁹⁹ The NI Curriculum requires that schools report annually on young people’s attainment in relation to the cross-curricular skills (using mathematics, communication, using ICT) and on young people’s progression in relation to the ‘thinking skills and personal capabilities’ framework (self management; working with others; being creative; thinking, problem solving and decision making; and managing information).

¹⁰⁰ Assessment for learning – though not statutory – is promoted by the NIC and requires inter alia, the sharing of learning intentions and success criteria, and peer and self-assessment, peer and self evaluation of learning

¹⁰¹ While active approaches to teaching and learning are not a statutory requirement of the curriculum, the statutory requirement to report on the development of skills (Education Order 2007) will require in turn that students are provided with opportunities to develop and demonstrate the skills outlined above.

¹⁰² N.5.

¹⁰³ Available at: www.detini.gov.uk/deti-stats-index/stats-surveys.htm

their grammar school peers.¹⁰⁴ Further, while the proportion of pupils recorded by their school as being unemployed after leaving school was 4% in 2009/10, 1% of children leaving grammar school were recorded as unemployed compared with 5% of those leaving non-grammar schools. For pupils entitled to free school meals this figure was 7% compared with 3% for those pupils not entitled to FSM.¹⁰⁵

The current educational policy environment places particular emphasis on the development of *literacy and numeracy skills* for all young people,¹⁰⁶ recognising that ‘a solid foundation in literacy and numeracy is absolutely essential to ensure they can contribute effectively to the economy and society and live fulfilling lives’.¹⁰⁷ Moreover, in addition to the broad objectives of the NI curriculum outlined above, specific provision is made for preparation for adult life, through a focus on *inter alia*, *transferable skills*, and education for *employability* (both as key element of the curriculum, a component of PDMU in the primary curriculum and as part of the learning area ‘Learning for Life and Work’ in the post-primary curriculum’). Further an emphasis on ‘*thinking skills*’ across the curriculum provides a context in which to develop the young person’s critical thinking. Finally the *Entitlement Framework*, to be fully operational by 2015, ensures that young people are provided with the opportunity to pursue both academic and applied subjects at KS4 and at post-16.

The NI Curriculum also makes some provision to prepare young people for life in a ‘free society’¹⁰⁸ through the subjects

of PDMU (primary) and Local and Global Citizenship (post-primary). At KS1 and 2 young people are required to develop their understanding of active and meaningful participation in the community and ways of responding to conflict. At KS3 they are required to understand the basic characteristics of democracy, ways to participate in school and society and the principles of equality. However there is no statutory requirement in relation to understanding the functions of government or the groups protected by Section 75 of the NI Act – these are merely noted as non-statutory examples. At KS4 young people are required to explore key democratic institutions and how to participate in a range of democratic processes. In practice, despite the lack of emphasis on political literacy skills in the statutory curriculum, non-statutory guidance and support resources attend to these issues.¹⁰⁹

An evaluation of Local and Global Citizenship suggests that young people’s trust in political institutions and intention to engage in political behaviour remain low.¹¹⁰ Also 55% of respondents to the Young Life and Times Survey in 2010¹¹¹ indicated that they knew ‘nothing at all’ or ‘not very much’ about politics in NI, 29% they knew ‘some’ and only 12% and 3% indicated that they knew ‘quite a lot’ or a ‘great deal’ respectively. In terms of interest in politics in NI, 60% of respondents said they had ‘none and all’ or ‘not very much’, 23% said they had ‘some’ interest, while 12% and 6% said that they had ‘quite a lot’ or ‘a great deal’ respectively.

104 Available at www.deni.gov.uk/qualifications_and_destinations_2009_10.pdf

105 N.104.

106 N.4.

107 N.4. (p.2).

108 Article 29 UNCRC.

109 KS3 resources available at: http://www.nicurriculum.org.uk/key_stage_3/areas_of_learning/learning_for_life_and_work/resources/index.asp;

Non-statutory guidance for KS4 available at: http://www.nicurriculum.org.uk/docs/key_stage_4/areas_of_learning/learning_for_life_and_work/ks4_citizenship_guidance.pdf

110 University of Ulster (2010) Evaluation of Local and Global Citizenship Coleraine: UNESCO Centre.

111 ARK. Young Life and Times Survey, 2010 [computer file]. ARK www.ark.ac.uk/yft [distributor], July 2011.

4.2.3 Health and sex education

In setting out the educational aim that no child should leave school without being equipped to face the challenges that he or she can expect to be confronted with in life, the Committee on the Rights of the Child has highlighted the importance of accurate and appropriate information in education settings for the current and future health and development of adolescents, including information on 'safe and respectful social and sexual behaviours'.¹¹² The Committee has also called upon States parties to provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In so doing, they have encouraged States parties to actively involve adolescents in the design and dissemination of information through a variety of channels beyond the school, including youth organisations, religious, community and other groups and the media.

In relation to mental health, the Committee has raised its concern in general at the high level of suicide amongst adolescents, calling on states to make all necessary services available to young people.¹¹³ In particular, the Committee has raised concern in relation to support for children with mental health problems – particularly in NI where the legacy of the conflict has an impact.¹¹⁴

The NI Curriculum contains provision for health education through the inclusion of 'personal understanding' and 'personal health' as key elements to be addressed

by all learning areas/subject strands, and through the specific requirements contained in the programmes for PDMU (primary) and Personal Development (PD) (post-primary).¹¹⁵ PDMU requires that children explore *inter alia* self-esteem, emotions and health and growth; PD requires that young people explore issues associated with the themes of self-awareness, personal health and relationships.

In relation to *sexual health*, NI has an unacceptably high rate of teenage pregnancy and a worrying growth in the number of young people who have STDs. In 2010 there were 1,235 births to mothers aged 19 years and under (outside marriage). This represents 12% of all births outside marriage and 5% of all live births.¹¹⁶ 22% of 16 year olds responding to the 2008 YLT survey said they had had sexual intercourse at least once (19% of males and 25% of females).¹¹⁷ 89% of 16 year olds responding to the 2004 YLT survey said they had had lessons, videos or discussions in school about having sexual intercourse.¹¹⁸ According to the Public Health Agency, the number of new HIV diagnoses in Northern Ireland rose by 20%, from 66 in 2009 to 79 in 2010. New STI diagnoses also increased in 2010 by 6% compared with figures for 2009. While uncomplicated Chlamydia infections showed a slight decline from 2009 (down by 4%, to 1,832 cases in 2010), diagnoses of the other main infections increased:

- uncomplicated gonorrhoea increased by 13%;
- genital herpes simplex (first episode)

112 N.91. (para 26).

113 United Nations, Committee On The Rights Of The Child (2003) *General Comment No. 3: HIV/AIDS and the Rights of the Child* (para 22). UN: Geneva CRC/GC/2003/3.

114 N.22. This point is not directed at schools in particular but remains pertinent.

115 N.10.

116 Available at: <http://www.nisra.gov.uk/demography/default.asp8.htm>

117 Available at: www.ark.ac.uk/ylt/2008/Health/USEX.html

118 Available at: www.ark.ac.uk/ylt/2004/Education/SCHSEX.html#gender

increased by 18%;

- genital warts (first episode) increased by 2%;
- non-specific genital infection increased by 14%.¹¹⁹

While the curriculum requires that young people learn about the implications of sexual maturity and early sexual activity, topics such as contraception, teenage pregnancy, the impact of underage parenting, the law and STDs are provided as examples only; i.e. are not statutory.¹²⁰ Non-statutory guidelines and support resources encourage these issues to be addressed.¹²¹ However, given that there are general concerns about how well trained teachers are to address these issues in a school context as well as particular concerns about how well some schools teach and respond to lesbian, gay, bisexual and transgender (LGBT) issues,¹²² and that schools have considerable discretion as to what to teach, it is plausible that schools may choose not to address issues which are considered controversial. While there is no legislative provision permitting parental withdrawal from sex education, schools may be granting these requests on a case by case basis, with a potentially detrimental effect on young people's right to an effective education.

In relation to *mental health and well-being*, suicide rates are higher in NI than in England and Wales, with children in NI experiencing higher levels of suicide and abuse than elsewhere in the UK.¹²³ In terms of youth suicide (that is those under 25 years old), between 1997 and 2008,

420 (347 male; 73 female) young people took their own lives.¹²⁴ Various school-based initiatives have been developed including curriculum based initiatives¹²⁵ to address emotional health and well-being. While the statutory curriculum however does not address directly the issue of suicide awareness, 41% of schools in a recent survey of post-primary schools indicated that suicide awareness activities were part of their overall provision for young people's emotional health and wellbeing.¹²⁶

4.3 Key issues

- To keep under review the efficacy of literacy and numeracy strategies with a particular focus on how their implementation is impacting on disadvantaged and vulnerable groups of children.
- To ensure that basic political literacy (knowledge and skills) are a statutory component of the NI Curriculum.
- To ensure that suicide awareness is a statutory component of the NI Curriculum.
- To keep under review what is being delivered in practice in relation to sex education.
- To clarify the legal position around parental withdrawal from sex education.

119 Available at: www.publichealth.hscni.net/news/northern-ireland%E2%80%99s-new-hiv-and-sti-figures-rise

120 N.10.

121 See 'insync' resources for KS3 available at: http://www.nicurriculum.org.uk/key_stage_3/insync/index.asp and non-statutory guidance for KS4, available at: http://www.nicurriculum.org.uk/docs/key_stage_4/areas_of_learning/learning_for_life_and_work/ks4_PD_guidance_Aug2011.pdf

122 McNamee, H. (2006) *Out on your own – an examination of the Mental Health of Young Same-Sex attracted Men*. Belfast: The Rainbow Project.

123 NICCY (2007) *The Inquiry into the prevention of suicide and self-harm. Response by the Northern Ireland Commissioner for Children and Young People*, October, 2007, Belfast: NICCY.

124 Forbes, T., Sibbett, C., Miller, S. and Emerson, L. (2012) *Exploring the Community Response to Multiple Deaths of Young People by Suicide*, Belfast: Centre for Effective Education, Queen's University Belfast.

125 For example DE have initiated a the Pupil Emotional Health and Wellbeing (PEHAW) programme, the Independent Counselling Support Services for Schools (ICCS) and Delivery Keeping Safe Messages to Primary Aged Children programme http://www.deni.gov.uk/index/21-pupils-parents-pg/pupils_parents-newpage-2.htm (see N.121.).

126 Connolly, P., Sibbett, C., Hanratty, J., Kerr, K., O'Hare, L. and Winter, K. (2011) *Pupils' Emotional Health and Wellbeing: A Review of Audit Tools and a Survey of Practice in Northern Ireland Post-Primary Schools*. Belfast: Centre for Effective Education, Queen's University Belfast.

5.0 Human Rights Education

5.1 Introduction

Since the UDHR enshrined Human Rights Education (HRE) as a universal entitlement,¹²⁷ the 'right to human rights education' has been established further through explicit references to it as a state obligation and implicit references to its intrinsic value in numerous human rights instruments.¹²⁸

In particular, States are required to ensure that education is directed towards respect for human rights (ICESCR Article 13) and to propagate the principles and purposes of specific instruments (CERD, Article 7; CEDAW, Article 10; CRPD, Article 24a; Convention Against Torture (CAT) Article 10).¹²⁹ Furthermore, UN treaty bodies acknowledge the role of education in ensuring effective implementation of international human rights standards at national levels. For example: the Human Rights Committee has recognized the importance of all individuals knowing their rights as articulated in the International Covenant on Civil and Political Rights (ICCPR) and has urged states to take steps to familiarize authorities with its contents;¹³⁰ 'educational activities' have been endorsed by the Committee on Economic, Social and Cultural Rights as 'appropriate' for the purpose of the progressive realization of these rights;¹³¹ and the Committee Against Torture has recognised education as a preventive

measure required by CAT.¹³² Moreover States are encouraged to include information about educational activities in their periodic reports to Committees and to disseminate these reports to the public.¹³³

While the target audience for HRE on the basis of the international instruments above is wide ranging, the CRC is more specific in its focus. Article 29:1b requires that education be directed towards 'the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations'. Moreover Article 42 of the CRC identifies education as a key mechanism for effective implementation. This is endorsed further by the Committee on the Rights of the Child¹³⁴ who have stated that 'states should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society' and place special emphasis on children acquiring knowledge of their rights through 'incorporating learning about the Convention and human rights in general into the school curriculum at all stages'.¹³⁵ In particular the Committee has stipulated that human rights education should provide information on the content of human rights treaties. And that children should learn about human rights by seeing human rights standards implemented in practice, whether at home, in school or within the community.

127 United Nations, General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (Article 26:2).

128 McEvoy, L. and Lundy, L. (2007) 'In the Small Places': Human Rights Culture, Education and Conflict-Affected Societies. in G. Anthony, K. McEvoy and J. Morison (eds) *Judges, Transition and Human Rights*. Oxford: Oxford University Press pp 495-515; Declaration on HRE adopted by UN Gen Assembly 2012.

129 In some cases the promotion of the content and principles of the conventions are to the public in general (e.g. CERD, CEDAW, CRPD), in other cases the conventions require specific training for target groups of individuals acting on behalf of the state (e.g. CAT)

130 Human Rights Committee (1981) *General Comment No.3: Implementation at the national level* (Art. 2), (para 2), UN: Geneva.

131 Committee on Economic, Social and Cultural Rights (1990) The nature of States parties obligations (Art. 2, par.1) General Comment No.3, (para 7), UN: Geneva.

132 Committee Against Torture (2008) *General Comment No.2, Implementation of article 2 by States Parties*, (para 25), UN: Geneva, UN/CAT/C/GC/2.

133 See for example, Committee on the Elimination of Racial Discrimination (1977) General Recommendation No. 05: Reporting by States parties (Art. 7, UN: Geneva).

134 United Nations, Committee on the Rights of the Child (2003) General Comment No.5: General Measures of Implementation of the Convention on the Rights of the Child (para. 66). UN: Geneva CRC/GC/2003/5

135 N.134. (para.68).

5.1.1 The World Programme for Human Rights Education¹³⁶

The World Programme for Human Rights Education (WPHRE) (Phase1) articulates the UN vision of effective HRE in primary and secondary schools. In short it endorses: 'human rights through education' and 'human rights in education'. The latter will be discussed in more detail below. In terms of HRE teaching and learning, a number of issues pertinent to the NI context are raised by this programme:

- Specific inclusion of HRE in the curriculum in general and citizenship and history curricula in particular.
- Equal importance attached to cognitive and affective curricula components of HRE.
- Opportunities for young people to put human rights learning into practice.
- Relating human rights to issues in young people's daily lives.
- The use of participatory pedagogies.
- The adoption of a comprehensive training policy on HRE for educational personnel, including a focus on, inter alia, 'knowledge about human rights, their universality, indivisibility and interdependence and about protection mechanisms'.¹³⁷

5.2 Law, policy and practice

5.2.1 Inclusion of HRE in the statutory curriculum

Specific mention of human rights as part of the statutory NI Curriculum at primary level appears only at KS2 where reference is made to 'developing knowledge, understanding and skills in human rights and social responsibility' as part of PDMU¹³⁸. The non-statutory¹³⁹ guidance in elaborating on this however makes no reference to human rights, children's rights or any international human rights standards. In reference to the values underpinning PDMU the non-statutory guidance suggests that schools may wish to use the UDHR or CRC as a vehicle through which children can explore their own values. No reference is made to human rights in any other aspect of the NI Curriculum at primary level. Despite the lack of reference to, and guidance on, the teaching of human rights at primary level, many schools have incorporated the Amnesty International 'Lift Off' programme into their PDMU curriculum¹⁴⁰.

The NI Curriculum at Post-Primary level contains specific provision for Local and Global Citizenship (LGC) education,¹⁴¹ which at KS3 contains as a core theme: 'Human Rights and Responsibilities'. This makes specific reference to upholding

136 WPHRE Plan of Action Phase 1 available at: <http://www.ohchr.org/Documents/Publications/PActionEducationen.pdf>; Evaluation of WPHRE First phase available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/493/11/PDF/N1049311.pdf?OpenElement>; The emphasis of phase 2 of the WPHRE is on Higher Education

137 See Plan of Action at N.133.

138 N.10.

139 N.109.

140 See evaluation of WPHRE at N.134.

141 N.10.

human rights standards, investigating human rights principles, balancing and limiting rights and investigating examples of infringement of rights. Core human rights instruments however are not statutory – the UDHR, CRC and ECHR offered only as *examples* which might be included. In practice, supporting (non-statutory) resources build this aspect of the curriculum around the UDHR and UNCRC¹⁴². No specific reference to human rights is made in any other aspect of the statutory Post-Primary Curriculum¹⁴³. Research evidence would suggest that young people's learning in relation to human rights is increasing as a result of LGC; however there are limited opportunities for young people to put this learning into practice¹⁴⁴.

At KS4 the statutory curriculum for LGC makes no specific reference to *human rights* – 'exercising rights and social responsibilities' is referred to instead.¹⁴⁵ However, the non-statutory guidelines urge schools to interpret this to mean 'human rights' and to developing curricula around international and regional human rights instruments.¹⁴⁶ In practice, many schools opt for the GCSE in LLW offered by CCEA to fulfil this aspect of the statutory curriculum¹⁴⁷. While reference is made to human rights in this GCSE, HRE content is limited to narrowly selected articles of the UDHR – contrary to the principles of indivisibility and interdependence.

Support for HRE is evident in the CRED policy, which states that it is 'premised on the interdependence between equality, good relations and human rights, including UNCRC'¹⁴⁸ and identifies 'respect for rights' as both an objective and outcome of the policy.¹⁴⁹ Further the associated guidelines identify the promotion of 'an emphasis and understanding of human rights and equality within the UNCRC' as an indicator of high quality teaching and learning¹⁵⁰ and identify the specific knowledge of HRE and equality principles in LGC as one of the substantial curricular areas through which to further the policy's aims.¹⁵¹

5.2.2 Teacher education for HRE

No comprehensive strategy has been established in relation to teacher education for HRE nor does the professional competence framework¹⁵² make any reference to human rights or children's rights¹⁵³. The CRED (non-statutory) guidelines however include an amended form of relevant competences (8 and 12) which include reference to an understanding of contemporary debates in relation to human rights.¹⁵⁴ Investment in training for LGC was significant, but the programme focused primarily on pedagogical approaches¹⁵⁵. Research suggests that this has been successful in promoting active and participatory learning in the classroom – but arguably to the detriment of a sound conceptual understanding of concepts, in particular human rights.¹⁵⁶

142 KS3 support resources available at: http://www.nicurriculum.org.uk/key_stage_3/areas_of_learning/learning_for_life_and_work/resources/index.asp

143 Arguably the statutory curriculum for English at KS3 includes HRE since it requires young people to 'use literature and drama, poetry or moving image to explore other's needs and rights'. The curriculum for Drama likewise makes reference to 'balancing rights' though this is not statutory; the History curriculum refers to 'women's rights' and 'workers' rights' though again as examples of issues to explore only.

144 N.110.

145 N.10.

146 Available at: <http://www.nicurriculum.org.uk/docs/key_stage_4/areas_of_learning/learning_for_life_and_work/ks4_citizenship_guidance.pdf>

147 See GCSE specification at: http://www.rewardinglearning.org.uk/microsites/LLW/revised_gcse/specification/index.asp

148 N.6. (para 6.1).

149 N.6. (para 6.3/4).

150 N.16. (p.23).

151 N.16. (p.26).

152 GTCNI *Teaching: the Reflective Profession*.

153 Reference is made to pupil voice but this is not connected to children's participation rights. The CRED (non-statutory) guidelines include an amended form of relevant competences which include reference to an understanding of contemporary debates in relation to human rights from ITE through to CPD (p.46).

154 N.6. (p.46).

155 McEvoy, L. (2007) Beneath the Rhetoric: Policy Approximation and Citizenship Education in Northern Ireland Education, *Citizenship and Social Justice* 2(2) pp.135-158.

156 N.108.

5.3 Key issues

- To ensure that there is a statutory requirement to teach about international, regional, national and local human rights instrument, in particular the CRC.
- To ensure that opportunities exist within the statutory curriculum for young people to put human rights learning into practice.
- To embed HRE across all aspects of the statutory curriculum.
- To encourage a comprehensive strategy for ensuring teachers and other educational personnel are competent and confident in developing and delivering HRE programmes.

6.0 Tolerance and respect for diversity

6.1 Introduction

The principle of tolerance and respect for diversity is contained across a number of human rights treaties including Article 26 of the UDHR and Article 13(1) ICESCR. Accordingly, education should enable all persons to ‘participate effectively in a free society, [and] promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups’ (Article 13(1) ICESCR). Elsewhere, Article 6 of the Framework Convention on National Minorities requires States Parties to take particular measures in education to encourage a spirit of tolerance, intercultural dialogue and the promotion of mutual respect and understanding, irrespective of a person’s ethnic, cultural, linguistic or religious identity.

Article 29 of the CRC takes these provisions as a starting point and, in setting out the aims of education, requires that the education of the child should be directed to, *inter alia*, the development of respect for the child’s parents, cultural identity, language, the country in which the child is living and from where he/she originates, as well as for ‘civilisations different from his or her own’. The Committee on the Rights of the Child has highlighted the links between Article 29(1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. It notes that racism ‘thrives where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and

linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values’.¹⁵⁷ Further it recognises that approaches to promoting tolerance and friendship among all peoples,¹⁵⁸ might appear to sit in tension with policies designed, to develop respect for the child’s *own* cultural identity, language and values.¹⁵⁹ However the Committee argues that this provision ‘recognises the need for a ‘balanced approach to education...which succeeds in reconciling diverse values through dialogue and respect for difference’. Moreover it suggests that children are ‘capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another’.¹⁶⁰

With respect to religious education per se, Article 18(4) of the International Covenant of Civil and Political Rights obliges States parties to respect the liberty of parents to ‘ensure the religious and moral education of their children in conformity of their own convictions’ (see also Article 13(3) ICESCR). The Committee on Civil and Political Rights has made it clear in General Comment No.22 that Article 18 is not limited in its application to traditional religions or to religions and beliefs. Likewise, this includes the right not to profess any religion or belief. The Committee has also stipulated that education that includes instruction in a particular religion or belief is inconsistent with Article 18.4 unless provision is made for non-discriminatory

157 N.93. (para 11).

158 UN (1989) Convention on the Rights of the Child Article 29 (1d).

159 UN (1989) Convention on the Rights of the Child Article 29 (1c).

160 N.91. (para 4).

exemptions or alternatives that would accommodate the wishes of parents and guardians.¹⁶¹

The right of the *child*, to freedom of thought, conscience and religion, is reaffirmed in Article 14 of the CRC, with parental direction that is consistent with the child's evolving capacities. This should be read in light of the CRC's four cross-cutting principles with respect to non-discrimination, best interests, the right to life and development, and the right to express views on all matters affecting the child.

At European level the right to freedom of thought, conscience and religion is established in Article 9 ECHR which includes freedom to manifest a religion or belief, in worship, teaching, practice and observance. Similarly, Article 2, Protocol 1 ECHR obliges States to respect the right of parents to ensure that education and teaching is in conformity with their own religious and philosophical convictions. However, the UK has entered a reservation in respect of the latter stipulating that this is accepted ;only so far as compatible with the provision of efficient instruction and training, and the avoidance of unreasonable expenditure'.

6.2 Law, policy and practice

Approaches to promoting tolerance and respect for diversity operate at a structural level, for example integrated schools and shared education programmes between schools, and through cross-community contact schemes and curriculum initiatives.¹⁶²

6.2.1 Support for 'Integrated Education'

There is no specific international human rights provision which could be said to be directly supportive of integrated education. However, integrated schooling is a way of fulfilling the obligation in Article 29 of the CRC to encourage tolerance and respect for diversity. The UN Special Rapporteur on the Right to Education and the Committee on the Rights of the Child have both drawn attention to the lack of sufficient places in integrated schools in Northern Ireland (see section 2.1 above).

According to DENI¹⁶³ figures for 2011/12, 7% of children in Northern Ireland attend Grant Maintained or Controlled Integrated schools. While there has been an increase in places at integrated schools, it is the only sector where there are an insufficient number of places at primary level¹⁶⁴. In 2010, 70% of NILT¹⁶⁵ respondents said they would prefer to send their children to a mixed-religion school. A survey carried out in 2008 on behalf of NICIE¹⁶⁶ found that 84% of respondents who had children or grandchildren of school age or younger thought that integrated education was 'very important' or 'fairly important' to peace and reconciliation in NI.

6.2.2 Support for 'Shared Education'

As noted above (section 2.2.4) the Entitlement Framework provides a basis upon which to encourage collaboration between schools. However this does not require that schools collaborate on a cross-community basis. Schools are exempt from the obligation to provide

161 Human Rights Committee (1993) *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)* (para 6), UN: Geneva.

162 N.155.

163 N.27.

164 N.45.

165 Available at: www.ark.ac.uk/nilt/2010/Community_Relations/OWNMXSCH.html

166 Available at: www.nicie.org/aboutus

pupils who are attending but not registered with religious education and collective worship.¹⁶⁷ However, the legislation and guidance does not otherwise take account of the implications of cross-community collaboration on the child or young person's right to cultural identity and freedom of religion within a school ethos that may not align with their religious and cultural values.

Considerable public support exists for 'shared education.' For example a NICIE survey in 2008 found that 79% of parents and grandparents with children of school age or younger supported schools sharing facilities with the nearest school even if from a different type (sector). 79% also supported the schools their children/grandchildren attended partnering, collaborating and sharing facilities with other nearby schools regardless of their type or sector.

There are several initiatives seeking to promoting sharing in education; however these are not directly state funded¹⁶⁸. For example the International Fund for Ireland (IFI) supports the 'Sharing in Education Programme' which provides funds for educational experiences where reconciliation is an overriding objective. This fund is managed by DENI. IFI and Atlantic Philanthropies jointly fund the 'Sharing Education Programme' (SEP) which is managed by Queen's University Belfast and currently involves 140 schools (primary and post-primary).¹⁶⁹ While many more schools are involved in collaborative activities outside these programmes¹⁷⁰ research suggests that, notwithstanding the challenges associated with collaboration, schools involved in SEP

programmes are generally more positive in their attitudes towards trust building and reconciliation outcomes.¹⁷¹

6.2.3 NI Curriculum

The statutory curriculum makes a general provision for teaching and learning in relation to tolerance and respect for diversity through the inclusion of 'mutual understanding' and 'cultural understanding' as key elements of the curriculum to be addressed by all learning areas/subject strands. In addition specific provision is made within PDMU (primary) and Local and Global Citizenship (post primary). For example at KS1 and 2 children are required to explore similarities and differences and to value and celebrate cultural differences and diversity. At KS3 young people are required to explore 'diversity and inclusion' which includes a statutory requirement to investigate 'prejudice, stereotyping, sectarianism and racism' and 'ways of managing conflict and promoting community relations, reconciliation'. This theme is continued into KS4 but is less specific in nature, focusing on 'challenges and opportunities of diversity in NI and the wider world'.¹⁷² Extensive support materials and non-statutory guidelines have been produced to support the delivery of these aspects of the curriculum; however schools have discretion in terms of the way in which this is delivered. Research suggests that young people are keen to learn more about these issues but that teachers lack confidence to deal with the more controversial aspects of diversity. The need for continued professional development of teachers in relation to community/good relations has been

167 Education (2006 Order) (Commencement No2) Order (NI) 2007. Circular 2007/20 gives guidance on the responsibilities in relation to attendance, discipline, charging and SEN for pupils who are attending a school but are not registered pupils.

168 Some funding for IFI comes from the British Government; IFI 'Sharing in Education' programme is funded through DE but is not DE money.

169 Available at: www.schoolsworkingtogether.co.uk

170 Donnelly, C. and Gallagher, T. (2008) *School Collaboration in Northern Ireland: Opportunities for Reconciliation. Report to Atlantic Philanthropies* <http://www.schoolsworkingtogether.co.uk/reports.html>; Atkinson, M., Springate, I., Johnson, F. and Halsey, K. (2007). *Inter-school collaboration: a literature review*. Slough: NFER. Available at: <http://www.sharingeducationprogramme.co.uk/documents/nfer-report.pdf>

171 Hughes, J. and Donnelly, J., Hewstone, M. and Carlisle, K. (2010) *School Partnerships and Reconciliation: An evaluation of school collaboration in Northern Ireland*. Available at: <http://www.schoolsworkingtogether.co.uk/documents/School%20collaboration%20in%20NI%202010.pdf>

172 N.10.

identified by the CRED policy¹⁷³ which makes a commitment to provide funding to facilitate a move away from dependency on external organisations in delivering this type of work in schools to ‘firmly embedding’ CRED activities in educational settings by ‘providing a strong skills base for educators’.¹⁷⁴

Support for curriculum initiatives which are designed to promote tolerance and respect for diversity is central to the CRED policy. In particular the policy states that one of its intended outcomes is ‘to develop learners who understand and respect the rights, equality and diversity of all Section 75 groups’.¹⁷⁵ There is an implicit assumption in CRED that this will be achieved, at least in part, through the curriculum. However, as noted above, Section 75 is not a *statutory* aspect of ‘Local and Global Citizenship’ (see section 4.2.2). There is therefore arguably a need to align curriculum content more carefully with CRED aspirations. In particular, given that there appears to be teacher reluctance to deal with LGBT issues (see section 4.2.3), there is a danger that the rights of this Section 75 group will not be represented adequately.¹⁷⁶

6.2.4 Religious Education

Schools are required to teach Religious Education (RE) and to have a period of collective worship, both of which are of a Christian nature.¹⁷⁷ Moreover, all schools are required to follow the core syllabus for religion which has been produced for DE by the four main Christian churches.¹⁷⁸ The DE has the power to ask those ‘appearing to the Department to have an interest in the teaching of religious education’ in grant aided schools to prepare a syllabus.

The decision to do this through the four main Christian churches in NI (and thus to exclude church leaders of other faiths, parents and children) can be questioned. While the revised version of the Core Syllabus requires the teaching of a ‘world religion other than Christianity’ at KS3 only,¹⁷⁹ other faith communities did not have a direct input into its development. This was highlighted by an Equality Impact Assessment of the proposed revised core syllabus carried out by DE: some non-Christian and ‘Other’ religious groups along with NICIE thought the proposals could have adverse impacts on the grounds of age, religion and race and did not make enough provision for religions other than Christianity.¹⁸⁰

Most of the young people who responded wanted a more relevant and engaging religious education programme, which included issues affecting their daily lives and education about other religions, that was taught in a more ‘fun’ and practical way. Research suggests further that young people are keen to learn about other religions,¹⁸¹ but there is little research to indicate how world religions are being taught in schools. The exemption of RE from Inspection by the Education and Training Inspectorate (ETI) (except if explicitly requested by a school) means that information from inspection reports in relation to the delivery of this aspect of RE will be limited.

Parents have an absolute right to withdraw their children from RE and collective worship; the child must not be excluded directly or indirectly from the other advantages which the school affords; and children can be withdrawn to receive reasonable amounts of religious

173 N.6. (para 5.10).

174 N.6. (para 6.9).

175 N.6. (p.21 para 6.4).

176 For example, even though the non-statutory support resources for LGC contain activities designed to introduce young people to the Section 75 groups, the only group not represented in these activities are LGBT.

177 Education and Libraries (Northern Ireland) Order (1986) (Art. 21). Belfast: HMSO. (Amended in 2006).

178 Education (Northern Ireland) Order (2006) (Art. 11). Belfast: HMSO.

179 Available at: http://www.deni.gov.uk/re_core_syllabus_pdf.pdf

180 Available at: www.deni.gov.uk/results_doc_eqia-6.pdf

181 YLT survey response.

instruction elsewhere if access has not been granted to a minister of their faith.¹⁸² International human rights bodies, including the Human Rights Committee, have been supportive of opt-out provisions as a way of protecting minority rights in faith-based schools provided they are non-discriminatory. However, research suggests that the right to opt-out in NI is not well known by parents and that it sets those from minority belief backgrounds (including those who do not belong to any religion) apart from their peers during the school day and can impact adversely on their relationship with their parents and their belief community.¹⁸³ Moreover, the legislation does not allow for children to have their views given due weight in the decision about whether to participate or not. This potentially undermines their individual right to freedom of conscience in instances where they are in disagreement with their parents about whether they should attend or withdraw from religious education classes.

6.3 Key issues

- To ensure that in the context of an increased move towards cross-community collaboration, that children's and young people's rights to their own cultural identity and freedom of religion are protected in shared arrangements.
- To ensure that sufficient attention is given to world religions other than Christianity (particular at KS4) and that these religions are taught in a way that encourages tolerance and respect for diversity.
- To keep under review the provision for children who have been withdrawn from religious education classes.
- To ensure that children's views are taken into account in the decision to opt-out or opt-in to religious education.
- To ensure inclusion of all equality issues relating to Section 75 groups as part of the statutory curriculum, in particular a focus on LGBT issues.

182 N.177. (Art. 21(5)(8)).

183 Mawhinney, A., Niens, U., Richardson, N. and Chiba, Y. (2011) *Opting Out of Religious Education: The Views of Young People from Minority Belief Backgrounds*. AHRC report.

7.0 Protection of individual rights in school

7.1 Introduction

The UDHR and ICCPR alongside the ECHR make detailed references to civil rights. In respect of children, these are elaborated upon in the CRC which includes children's rights to freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, and privacy. Staff in schools also are entitled to enjoy this range of rights without discrimination.

With respect to the privacy, this right is to be protected in all situations and settings, including education settings. Children also have the right not to have their correspondence interfered with arbitrarily or unlawfully. The Human Rights Committee has stipulated that compliance with the right to privacy in ICCPR (Article 17) requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*.¹⁸⁴

7.2 Law, policy and practice: children's individual rights

7.2.1 Children's civil rights in school

The Committee on the Rights of the Child has emphasised that children do not leave their human rights behind when they enter the school gate.¹⁸⁵ However, there is no legislation which specifically protects

children and young people's civil rights in schools. For example, in relation to the right to freedom of expression, many school rules prohibit the wearing of any badge or emblem, even where the message conveyed is unlikely to be considered to interfere with the rights of others. Moreover, there are also concerns about protection of children's right to privacy, particularly in correspondence: children report that some teachers read notes or mobile text messages in confiscated phones, even though this could only be justified if there was reason to believe there was a threat to the welfare of staff or pupils¹⁸⁶.

7.2.2 Children's participation rights

Article 12 of the CRC gives children the right to express their views freely on all matters affecting them, and for their views to be given due weight in accordance with the age and maturity of the child. In 2008, the Committee called upon the UK to strengthen children's participation in all matters of school, classroom and learning which affect them; and ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational need tribunals.¹⁸⁷ The Committee has provided extensive guidance on this right in its General Comment on Article 12.¹⁸⁸ It has emphasized that participation of children in decision-making processes should be achieved through, *inter alia*, class councils,

184 United Nations, Human Rights Committee (1988) *General Comment No.16: Right to Privacy* (para 8). UN: Geneva.

185 N.91.

186 NICCY (2009) *Children's Rights Review*, (NICCY, Belfast), p.308.

187 N.22. (para 67).

188 United Nations, Committee on the Rights of the Child (2009) *General Comment No.12: The Right of The Child To Be Heard*. UN: Geneva C CRC/C/GC/12.

student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. In particular, it emphasises that ‘these rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them’.¹⁸⁹ It has also recommended that children and young people are consulted on all aspects of education policy.

Article 13, on the right to freedom of expression, and Article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard. The former imposes an obligation on States parties is to refrain from interference in the expression of views, including through the creation of a safe environment which respects the views of the child. Article 17 on the other hand, requires the child to be able to have access to information in formats appropriate to their age and capacities on all issues of concern to them to assist them in forming their views.

Schools are required by law to consult pupils on discipline and bullying policies.¹⁹⁰ There are no other legal requirements to consult pupils on the issues affecting them, including: the curriculum, admission to schools, expulsions and suspensions, and special educational needs provision. There is no legal requirement to have a school council and, although it is thought that there is a growing number of schools who have a school council, there are no available statistics on their prevalence and no evidence as to how effective and/or representative they are in practice.¹⁹¹

These issues have been acknowledged by the NI Assembly Education committee which has initiated an investigation into school councils.

The 2006 and the 2010 Young Life and Times (YLT)¹⁹² surveys and the 2010 Kids Life and Times (KLT)¹⁹³ survey asked respondents some questions about their rights. 56% of YLT respondents said their school had a School Council although only 25% of them thought it was ‘very effective’. 26% of YLT respondents thought that pupils in their school were generally not allowed to express their views at all and 16% ‘agreed’ or ‘strongly agreed’ that their teachers did not respect them as individuals. P7 respondents to KLT were asked if teachers at their school had ever asked for their opinion about the way something was run in the school and 58% said that they had. In 2010, 39% of YLT respondents and 25% of KLT respondents said they had heard of the CRC.

7.2.3 Safety and welfare

The Committee has also made clear that a school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of Article 29 (1). Indeed, in its 2008 Concluding Observations, the Committee called upon the UK to intensify its efforts to tackle bullying and violence in schools¹⁹⁴ Article 19 of the CRC obliges States Parties to take all appropriate measures to protect the child from all forms of violence including physical or mental violence, injury, abuse and negligent treatment including sexual abuse and exploitation. In this context ‘mental violence’ includes psychological and/or physical bullying

189 N.186. (para 110).

190 Education (NI) Order 2003, Art. 19.

191 NI Assembly Research and Information Service (2011), *School Councils*, Paper 85/11.

192 Available at: <<http://www.ark.ac.uk/ylt/2006/>>; N.108.

193 Available at: <http://www.ark.ac.uk/klt/2010>

194 N.22. (para 67).

by other adults and children as well as cyber-bullying.¹⁹⁵

Although children are rights-holders in this context, the Committee has emphasised the crucial role of adults responsible for these children in all attempts to appropriately react and prevent such violence.¹⁹⁶ The types of administrative measures which should be put in place include: intra- and inter-agency child protection policies; professional ethics codes, protocols, memoranda of understanding and standards of care for all childcare services and settings including schools; and involving academic teaching and training institutions with regard to child protection initiatives.¹⁹⁷ Among the educational measures to be taken, the Committee has highlighted that children should be provided with accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks, including those relating to Information Computer Technology (ICT) and how to develop positive peer relationships and combat bullying.¹⁹⁸ In the context of Article 12, the Committee had emphasised that children's views must be invited and given due weight as a mandatory step at every point in a child protection process and that they are involved in the development of prevention strategies in general and in school, in particular in the elimination and prevention of bullying, and other forms of violence in school.¹⁹⁹

Schools are under an obligation to safeguard and promote the welfare of pupils.²⁰⁰ However, DE guidance for schools is contained in a 1999 Circular which is widely regarded as in need of

updating to reflect key changes in school contexts such as threats to child welfare posed by new technologies.²⁰¹ The Board of Governors of schools are required to determine the measures to be taken at the school with a view to protecting pupils from abuse.²⁰² All schools will have a child protection policy and dedicated child protection officer. Moreover, all staff are vetted under Access NI arrangements. Schools are also required by law to have a policy on bullying and must consult with pupils about the latter.²⁰³ Research carried out in 2011²⁰⁴ found that 39% of Year 6 and 29% of Year 9 pupils reported being bullied at school in the last two months. Boys tended to be victims of physical bullying more than girls. 15.5% of Year 6 and 17.0% of Year 9 pupils said they had experienced cyber-bullying in the past couple of months. 21% of Year 6 and Year 9 pupils said they had bullied another pupil at school in the last two months. Over two-thirds of Year 6 pupils and over four-fifths of Year 9 pupils knew that their school had a policy on bullying.

7.3 Law, policy and practice: teachers' rights

Employment equality legislation applies to the appointment and treatment of teachers in all schools in NI in the normal way with one key exception: schools can use a person's religion as a determining factor in their appointments since the employment of teachers is not subject to the requirements of the Fair Employment and Treatment (NI) Order 1998 in respect of religious discrimination. Moreover, although the European Union's Framework

195 United Nations, Committee on the Rights Of The Child (2011) *General Comment No13: The Right Of The Child To Freedom From All Forms Of Violence*. UN: Geneva.

196 N.195. (para 27).

197 N.195. (para 42).

198 N.195. (para 44).

199 N.195. (para 63).

200 Education and Libraries (Northern Ireland) Order 2003, Art. 18. Belfast: HMSO.

201 Available at: <http://www.deni.gov.uk/dc1999-10circular-3.pdf> DE Guidance – *Pastoral Care in Schools*.

202 N.200.

203 N.200, Art.19.

204 DENI http://www.deni.gov.uk/rb2_2011.pdf

Directive on Equal Treatment in Employment and Occupation prohibits discrimination in schools on the basis of religion or belief other than where it is a genuine occupational requirement,²⁰⁵ it includes an explicit exemption for NI in relation to the recruitment (but not promotion) of teachers. This unique exemption is stated to be ‘in order to maintain a balance of opportunity in employment for teachers in NI while furthering the reconciliation of historical divisions between the major religious communities’.²⁰⁶ While the exemption was historically introduced for transferred schools, it currently only applies in practice in relation to employment in Catholic schools in NI since controlled schools will follow the ELB fair employment guidance.

The issue of the teachers’ exemption from the religious discrimination legislation is required by law to be kept under review by the Equality Commission.²⁰⁷ Research suggests that there is little support for a change in the teacher exemption, either partially or in full.²⁰⁸ In practice, teachers applying to work in Catholic primary schools are normally required to hold a certificate in Catholic Education. Religious education teachers in post-primary Catholic schools are required to hold a similar qualification, although this is not always a requirement for other teachers. Religious tests are not otherwise applied directly in the recruitment process. However, it appears that they may be applied indirectly through questions asking

how the applicant could contribute to the ‘ethos’ of the school. Once a teacher is appointed to a controlled school, they can make a request to the Board of Governors of the school to be wholly or partly excused from conducting or attending religious education or collective worship, provided they make a statutory declaration that their request is made ‘solely on grounds of conscience’.²⁰⁹ There is no equivalent statutory protection for staff in other schools. However, all teachers have a right to freedom of conscience under Article 9 of the ECHR.

7.4 Key issues

- To encourage a greater awareness of students’ civil rights in schools.
- To address the fact that there is no legal requirement to have a school council or for children’s views to be taken into account in many of the matters affecting them at school.
- To ensure greater guidance and training for schools in addressing issues affecting children’s welfare.
- To keep under review the impact of policies and action plans on high levels of bullying.
- To review the impact of the teachers’ fair employment exemption on equality of access to employment in the Catholic school sector.

205 EU Council Directive 2000/78/EC (Employment Framework).

206 N.205. Article 15.

207 Fair Employment and Treatment (Northern Ireland) Order (1989). Belfast: HMSO.

208 Dunn, S. and Gallagher, A.M. *Research Report: The Teacher Exception Provision and Equality in Employment in Northern Ireland* (Belfast: Equality Commission, 2002).

209 N.177. (Art. 22).

8.0 Human Rights-Based approaches in education policy

8.1 Introduction

The UN definition of a ‘human rights-based approach’ as articulated in its Statement of Common Understanding²¹⁰ outlines three core principles which should guide a human rights-based approach (HRBA). These can be summarized as follows: (i) activity should further the realization of human rights; (ii) human rights standards should guide all phases of activity; and (iii) activity should contribute to the development of the capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights. In addition to the core principles, the Statement sets out a number of elements of good programming practices that are also essential under a HRBA, including *inter alia* that: people are recognized as key actors in their own development; participation is both a means and a goal; strategies are empowering; and analysis includes all stakeholders. These factors constitute key elements of a rights-based approach to educational policy. In its 2008 Concluding Observations in respect of the UK, the Committee on the Rights of the Child expressed concern that the CRC was not being regularly used as a framework for the development of strategies.²¹¹ The importance of human rights impact assessment as a means of ensuring that rights are respected in law and policy at all levels of government has also been emphasized and the Committee on the Rights of the Child has recommended that child rights impact assessments are

regularly conducted to evaluate ‘how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation’.²¹² This section of the report assesses the extent to which a human rights based approach has been adopted in the development and implementation of educational policy in NI. Specifically: (i) the extent to which human rights standards have been integrated into educational policy; and (ii) the extent to which children and young people and their parents have been actively engaged in the development and implementation of educational policy.²¹³

The extent to which HRBA has been adopted in the development of the targeted educational policy areas varies across policies. There is currently no formal or specific system in place to ensure that the impact of policies on children and/or their rights is systematically assessed and addressed. The only system that is currently in place more generally is Section 75 of the NI Act (1998) which requires designated public authorities to promote equality of opportunity across nine different grounds, including age. Departments also have a statutory duty to ensure that their decisions and actions are compatible with the ECHR and to act in accordance with these rights. However, these do not require public bodies to assess the impact of a policy or strategy against the provisions of the CRC or other international human rights standards.

210 United Nations (2003) *Statement of common understanding on a human rights-based approach to development co-operation*, Geneva: United Nations. This is sometimes referred to as the ‘Stamford’ statement. For further detail on rights based approaches see Lundy and McEvoy (2012) *Childhood, the United Nations Convention on the Rights of the Child and Research: What Constitutes a ‘Rights-Based’ Approach?* in M. Freeman (ed) *Law and Childhood Studies*. Oxford: Oxford University Press.

211 N.22. (para 14).

212 N.22. (para 19).

213 Lundy and McEvoy (2012) at N.208.; Lundy and McEvoy (2009) ‘Developing Outcomes for Educational Services: a children’s rights-based approach’. *Effective Education* 1(1) 43–60.

8.2 Integration of human rights standards

Document	Reference to human rights
A Policy for Sustainable Schools	<p>The document makes implicit reference to ECHR stating that: ‘A general principle of the education system is that, so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure, pupils shall be educated in accordance with the wishes of their parents.’ (p.11)</p> <p>There is no explicit reference to human rights standards in the document. Nor was there any explicit reference in the consultation document.</p>
Programme for Cohesion, Sharing and Integration Consultation document	<p>The consultation document makes reference to the importance of promoting ‘fairness, equality, rights, responsibilities and respect at various points (see for example, p.1, p.10 and p.29) However, while reference is made to the importance of a rights based framework there is no explicit reference to or integration of international human rights standards.</p>
Community Relations, Equality and Diversity in Education Policy	<p>The Policy document makes reference to the ‘UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’ and of the recognition by the Committee on the Elimination of Racial Discrimination that discrimination on religious grounds as racial discrimination when there is an overlap with another indicator of ethnicity (p.4).</p> <p>Page 5 of the policy states that: ‘The views of children and young people need to inform the delivery of community relations, equality and diversity in education settings, both within and outside school’ while the CRC is recognised as one of the key drivers and underpinnings in the development of community relations generally and the policy specifically (p.10 and p.14). Annex 4 of the Policy sets out the relevant standards including Articles 6 and 12 of the Framework Convention for the Protection of National Minorities; Article 7 CERD; Articles 1 and 4 of the Declaration on the Rights of Persons Belonging to Minorities; the European Charter for Regional or Minority Languages; and Articles 2, 3, 12, 29 and 30 of the CRC.</p>

Document	Reference to human rights
Community Relations, Equality and Diversity in Education Policy (continued)	The CRED guidance highlights that children and young people should be active participants in the planning for and integration of the policy. To this end the guidance includes a number of indicators reflecting this principle including the development of school councils. A key indicator in relation to ‘high quality teaching and learning’ throughout is that it should promote an emphasis and understanding of human and children’s rights (p.16, p.23 and p.34.
Every School a Good School	<p>The then Minister for Education, in the foreword stated that: ‘<i>Every School a Good School</i> lies at the centre of my reform agenda and is consistent not only with Articles 28 and 29 of the United Nations Convention on the Rights of the Child but also complements the Ten Year Strategy for Children and Young People’. This did not appear in the initial consultation document.</p> <p>Page 31 of the strategy states: ‘Within schools, we want to encourage positive engagement between school governors and school principals and the wider school staff. We also want to see more schools following the example set by many, involving pupils more directly in decisions on the running of the school. This is consistent with Article 12 of the UNCRC and the right of the young person to have their voice heard on issues that affect them.’</p>
Every School a Good School Newcomer Policy	It is stipulated that the policy ‘upholds’ the right to education as enshrined in the Human Rights Act and ‘supported by’ the CRC. (p.6)

Document	Reference to human rights
The Way Forward for Special Educational Needs Draft Proposals	Page 40 of the consultation document states: ‘The current Code of Practice highlights the importance of children participating in all decisions about their education. This will continue to be an important element of the new approach. Schools and other bodies will be required to seek the views of the child and give due weight to those views according to the age, maturity and capability of the child in keeping with Articles 12 and 13 of the United Nations Convention on the Rights of the Child’.
Taskforce on Traveller Education	<p>Among the Taskforce Terms of Reference was the requirement to ‘ensure that recommendations for improvements are underpinned by the United Nations Convention on the Rights of the child (UNCRC) and other relevant equality and human rights legislation’. To this end, Articles 2, 12, 28 and 29 CRC are highlighted. The Human Rights Act (Articles 8 and 14, and Protocol 1, Article 2), and the Framework Convention for the Protection of National Minorities (Articles 6 and 12), the European Commission against Racism and Intolerance (Recommendations 3 and 10), ICESCR (Articles 2.2 and 13), CERD (Articles 5 and 7), and the observations of their relevant Committees are also highlighted as important contextual forces for this work.</p> <p>Among the key recommendations is the facilitation of consultation with children to allow them to participate in the education process, and that there must be active engagement and participation with Traveller children and young people and their families on the draft action plan and as an ongoing process.</p>
Review of Irish Medium Education	The consultation document highlights the obligations arising from the European Charter for Regional and Minority Languages (Articles 8 to 14)

8.3 Engagement with children and young people and their parents in the development and implementation of educational policies

Article 12 of the CRC provides all children with the right to express their views in matters affecting them and for those views to be given due weight in accordance with the age and maturity of the child. The Committee on the Rights of the Child has also identified Article 13, on the right to freedom of expression, and Article 17, on access to information, as crucial prerequisites for the effective exercise of the right to be heard. It is also important to note that the CRC accords a central role for parents in supporting their child in exercising their rights. Article 5 of the CRC obliges State parties to respect the rights of parents to provide appropriate direction and guidance in a manner consistent with the evolving capacities

of the child while Article 18 makes clear that parents have primary responsibility for the upbringing and development of their child, and for securing their best interests. As such, parents also have a crucial role to play in the development and implementation of educational policies. In addition, Section 75 of the NI Act (1998) imposes a duty on public bodies to consult with a number of identified groups, including children and young people, and ‘persons with dependants’.

An assessment of the extent to which children and their parents have indeed been engaged in these processes has been complicated by a lack of clear and available information from government departments in this regard and of concrete evidence wherein children’s views have been taken on board and given due weight in the final policy. An overview of children’s and parents’ engagement in respect of the targeted educational policies and the availability of child-friendly documents is set out below:

8.3.1 Engagement with children in the development and implementation of educational policies

Document	Engagement with children in consultation process	Consultation document available in child-friendly format	Final document available in child friendly format
A Policy for Sustainable Schools	There is no evidence that children were involved in the consultation process.	There is no evidence that the consultation document was available in child-friendly format.	A children's version is not available on the Department's website.
Cohesion, Sharing and Integration	<p>An event was held for young people aged 12-18 years on October 2010 in Grosvenor House, Belfast. The young people were provided with a young person's friendly version of the document in advance which informed them about CSI and helped them prepare their views and opinions with their youth worker.</p> <p>The young people involved were from a range of backgrounds including those living in poverty, with a disability, in alternative education provision, in conflict with the law, from minority ethnic communities and/or young people with an interest in this topic. The young people were provided with a summary report of the event and there appears to be a commitment that will be informed on what will change/be included in the final policy as a result of their involvement and where relevant an explanation of why their ideas have not been taken on board.</p>	<p>A 'youth friendly' version of the consultation was developed by OFMDFM in conjunction with the Participation Network</p>	The final document is awaited.

Document	Engagement with children in consultation process	Consultation document available in child-friendly format	Final document available in child friendly format
Community Relations, Equality and Diversity Policy	The consultation analysis document indicates that the Participation Network was appointed to undertake a specific consultation with children and young people through their membership organisations. In total, 431 children and young people participated.	A young people friendly version of the policy was produced to facilitate this consultation and made available to those participating organisations to use as appropriate.	It is not clear whether a children's version of the final document has been produced.
Every School a Good School	The final document states: 'In consulting on the draft school improvement policy, we highlighted specifically the characteristics of a good school, listing several features that would form part of our vision for the successful school of the future. Those characteristics were developed with specific input from young people themselves who, when involved, were very clear about what, for them, made a good school. In responding to this section, 75% of respondents agreed with that list of characteristics. Amendments and additional characteristics were also suggested and we have reviewed again, in light of consultation, the key components that make for a successful school'. However, no further detail is provided on how many or which groups of children participated or what age they were.	There is no evidence that a children's version of the consultation document was produced.	A children's version of the final document does not appear to have been produced at the time of writing

Document	Engagement with children in consultation process	Consultation document available in child-friendly format	Final document available in child friendly format
Every School a Good School (continued)	The final document also states that: 'The views of young people were also given particular importance, with schools encouraged to obtain the views of their pupils on the policy proposals and to reflect those views in their responses'.		
The Way Forward for Special Educational Needs	<p>The consultation document states that: 'There has already been extensive pre-consultation activity with the education, health, voluntary and statutory sectors and parents and children during the development of these policy proposals'. No further detail is provided.</p> <p>The analysis of consultation responses document indicates that of the 846 respondents to the SEN consultation, 23 were children and young people</p>	A children's version was produced. There is no evidence of this document being made available in accessible formats for children with disabilities.	Final proposals are awaited.
Every School a Good School: Supporting Newcomer Pupils Policy	The analysis of consultation responses indicates that the Department held presentations in ten schools to encourage participation from newcomer parents and pupils. It states that this resulted in a total attendance of 'almost 200 newcomer parents and pupils'. However, it is not clear whether and to what extent children and young people were engaged with directly.	There is no evidence that a children's version was produced.	A children and young people's version of the policy was produced in April 2009.

Document	Engagement with children in consultation process	Consultation document available in child-friendly format	Final document available in child friendly format
Taskforce on Traveller Education	85 Traveller children in pre-school and P1 from Traveller families across Northern Ireland took part in consultations with the Early Years and Transitions Task Force Sub Group with trained facilitators. The Special Educational Needs Sub Group consulted with 25 Traveller children from primary and post-primary schools.	Not applicable	A children and young people's version of the Taskforce report does not appear to have been produced.
Review of Irish Medium Education	It is not clear whether and to what extent children and young people were directly engaged in the consultation process.	A children and young people's version was produced.	Final policy document awaited.

8.3.2 Engagement with parents/carers in the development and implementation of educational policies

Document	Engagement with parents in consultation process
A Policy for Sustainable Schools	It is not clear whether and/or to what extent parents were engaged in the consultation process
Cohesion, Sharing and Integration	It is not clear whether and/or to what extent parents were engaged in the consultation process.
Community Relations, Equality and Diversity Policy	The Department of Education requested all schools to bring the consultation document to the attention of their school council and parent teacher association; however, the consultation analysis document indicates that no submissions were made by parents.
Every School a Good School	The consultation analysis document states that the formal consultation exercise sought to engage with as wide a range of interested parties as possible, including parents (p.2) however it is not clear what form this took and if/or how many parents were involved.
The Way Forward for Special Educational Needs	<p>The consultation document states that the Department actively engaged with parents in the pre-consultation phase as well as at the consultation stage through public meetings. However, no further detail is provided.</p> <p>The analysis of consultation responses document indicates that of the 846 respondents to the SEN consultation, 145 were 'parents, carers and the general public' however this is not disaggregated further.</p>

Document	Engagement with parents in consultation process
Every School a Good School: Supporting Newcomer Pupils Policy	The analysis of consultation responses indicates that the Department held presentations in ten schools to encourage participation from newcomer parents and pupils. It states that this resulted in a total attendance of ‘almost 200 newcomer parents and pupils’. However, this is not disaggregated further and it is not clear how many of the 184 responses were from parents.
Taskforce on Traveller Education	AnMuniaTober conducted a consultation exercise with over 90 Traveller adults/parents in April/May 2009. The Primary Education sub-group consisted of at least one Traveller parent and parents also contributed to the first meeting. The Post-primary and Youth sub-group, Early Years and Transitions, and Interculturalism and Racism sub-groups also included Traveller parents. The Special Educational Needs sub-groups consulted with parents on a one to one basis.
Review of Irish Medium Education	It is not clear whether and to what extent parents were directly engaged in the consultation process.

9.0 Conclusion

There has been very little legislative reform affecting education in NI in the last five years. There has, however, been a significant amount of policy discussion and consultation. Much of what has been under consideration can be linked to the realisation of a range of human rights imperatives, including improving access to effective education, providing a relevant curriculum and encouraging tolerance and respect for diversity. It is reassuring to see that the policy objectives are often connected directly to human rights standards. That said, while the broad (and sometimes specific) intentions may be human rights compatible, much of what has been proposed is still under discussion or has been postponed for various reasons including significant political disagreement about the policy objectives themselves. What will be significant from a human rights perspective will be the impact that these policy initiatives have on individuals’ rights to, in and through education if and when they are translated into practice. This will require evaluation and monitoring, with

particular attention being paid to the most vulnerable groups of children and young people, including those with disabilities, Irish Travellers, those in state care and others not educated in mainstream school settings. While the case has been made and accepted for rationalisation of the schools’ estate, the need to monitor and assess the impact on marginalised groups is imperative to ensure equality of access to an effective education. Moreover, there are several other areas where a case can be made for additional legislation and policy, including the provision of human rights education, the facilitation of cross-community collaboration and the protection of individual rights in school settings. In all cases, there is significant scope for the DE to adopt a human rights-based approach to its policy reform, including a recognition that (a) education is a human right to be enjoyed by all on an equal basis and (b) that parents and students should be engaged meaningfully in the processes of change and reform.

Contact us

If you would like to know more about the work of the Commission, or any of the services we provide, please contact us.

Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast
Northern Ireland
BT1 1NA

Telephone: +44 (0) 28 9024 3987

Textphone: +44 (0) 28 9024 9066

SMS Text: +44 (0) 7786 202075

Fax: +44 (0) 28 9024 7844

Email: info@nihrc.org

www.nihrc.org

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